

ANAS ELHADY, *et al.*,

Plaintiffs,

V.

CHARLES H. KABLE, Director of the Terrorist Screening Center; in his official capacity, *et al.*;

Defendants.

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Case No. 16-cv-00375
Hon. Anthony J. Trenga
Mag. John F. Anderson

EXHIBITS IN SUPPORT OF PLAINTIFFS’
FOURTH MOTION TO COMPEL
RE: “QUIET SKIES” DOCUMENTS AND INFORMATION

INDEX OF EXHIBITS

Exhibit	Description	Date
A	Jana Winter, "Welcome to the Quiet Skies," <i>Boston Globe</i> , available at http://apps.bostonglobe.com/news/nation/graphics/2018/07/tsa-quiet-skies/?p1=HP_SpecialTSA	July 28, 2018
B	<i>TSA's Quiet Skies Program</i> , Federal Air Marshal Service Information Bullet – Quiet Skies Selectees	March 13, 2018
C	Quiet Skies Surveillance Checklist	unknown
D	Excerpts of 30(b)(6) TSA Deposition	March 20, 2018
E	Excerpts of Deposition of Plaintiff El-Shwedhi	Nov. 29, 2017
F	Excerpts of Deposition of Plaintiff Mark Amri	March 8, 2018
G	Excerpts of TSC Responses to Second Set of RFPs No. 4.	Dec. 22, 2017
H	Defendants' Responses to Third Set of RFPs No. 1.	Jan. 4, 2018
I	Excerpts of TSC Responses to First Set of Interrogatories No. 23.	Feb. 21, 2018
J	Excerpts of TSC Responses to Second Set of Interrogatories No. 1.	Feb. 23, 2018

Exhibit A



Did you scan the boarding area from afar?

Have a cold, penetrating stare?

Sleep on the plane? Use the bathroom? Talk to others?

This is just some of the information that federal air marshals collect on thousands of regular US citizens under a secret, domestic surveillance program.

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Welcome to the Quiet Skies

By Jana Winter

July 28, 2018

[Read more: Lawmakers demand answers on 'Quiet Skies' surveillance program after Globe report](#)

Federal air marshals have begun following ordinary US citizens not suspected of a crime or on any terrorist watch list and collecting extensive information about their movements and behavior under a new domestic surveillance program that is drawing criticism from within the agency.

The previously undisclosed program, called “Quiet Skies,” specifically targets travelers who “are not under investigation by any agency and are not in the Terrorist Screening Data Base,” according to a Transportation Security Administration bulletin in March.

The internal bulletin describes the program’s goal as thwarting threats to commercial aircraft “posed by unknown or partially known terrorists,” and gives the agency broad discretion over which air travelers to focus on and how closely they are tracked.

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Brynn Anderson/Associated Press

But some air marshals, in interviews and internal communications shared with the Globe, say the program has them tasked with shadowing travelers who appear to pose no real threat — a businesswoman who happened to have traveled through a Mideast hot spot, in one case; a Southwest Airlines flight attendant, in another; a fellow federal law enforcement officer, in a third.

It is a time-consuming and costly assignment, they say, which saps their ability to do more vital law enforcement work.

TSA officials, in a written statement to the Globe, broadly defended

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declined to discuss whether Quiet Skies has intercepted any threats, or even to confirm that the program exists.

Release of such information “would make passengers less safe,” spokesman James Gregory said in the statement.

Passenger Screening Checklist	
Passenger Information	
Passenger Behavior	
Passenger Appearance	
Passenger Possessions	
Passenger Security	
Passenger Health	
Passenger Other	
Passenger Remarks	
Passenger Signature	

[Read the checklist](#)

Already under Quiet Skies, thousands of unsuspecting Americans have been subjected to targeted airport and inflight surveillance, carried out by small teams of armed, undercover air marshals, government documents show. The teams document whether passengers fidget, use a computer, have a “jump” in their Adam’s apple or a “cold penetrating stare,” among other behaviors, according to the records.

Air marshals note these observations — minute-by-minute — in two separate reports and send this information back to the TSA.

All US citizens who enter the country are automatically screened for

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checked and their names run against a terrorist watch list and other databases, according to agency documents.

Explore the behavior checklist

1. SUBJECT WAS ABNORMALLY AWARE OF SURROUNDINGS ▼

(If observed, check any that apply below) | Y N Unknown

Reversing or changing directions and/or stopping while in transit through the airport

Observing the boarding gate area from afar

Attempting to change appearance by changing clothes, shaving etc. while in the airport or on the plane

Boarded last

Observing other people who appear to be observing FAM team and/or subject

Using the reflection in storefront windows to identify surveillance

2. SUBJECT EXHIBITED BEHAVIORAL INDICATORS ▼

(If observed, check any that apply below) | Y N Unknown

3. SUBJECT'S APPEARANCE WAS DIFFERENT FROM INFORMATION PROVIDED ▼

(If yes, check any that apply below) | Y N Unknown

4. SUBJECT SLEPT DURING THE FLIGHT ▼

(If observed, check any that apply below) | Y N Unknown

5. GENERAL OBSERVATIONS ▼

(Provide detailed descriptions of any electronic devices in subject's

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6. FOR DOMESTIC ARRIVALS ONLY ▼

(If possible, provide identifiers (license plate, vehicle description) of pick up vehicle in AAR) | Y N Unknown

The program relies on 15 rules to screen passengers, according to a May agency bulletin, and the criteria appear broad: “rules may target” people whose travel patterns or behaviors match those of known or suspected terrorists, or people “possibly affiliated” with someone on a watch list.

The full list of criteria for Quiet Skies screening was unavailable to the Globe, and is a mystery even to the air marshals who field the surveillance requests the program generates. TSA declined to comment.

When someone on the Quiet Skies list is selected for surveillance, a team of air marshals is placed on the person’s next flight. The team receives a file containing a photo and basic information — such as date and place of birth — about the target, according to agency documents.

The teams track citizens on domestic flights, to or from dozens of cities big and small — such as Boston and Harrisburg, Pa., Washington, D.C., and Myrtle Beach, S.C. — taking notes on whether travelers use a phone, go to the bathroom, chat with others, or change clothes, according to documents and people within the department.

Flying the quiet skies

Air marshals are following citizens to or from cities big and small, including these airports

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Quiet Skies represents a major departure for TSA. Since the Sept. 11 attacks, the agency has traditionally placed armed air marshals on routes it considered potentially higher risk, or on flights with a passenger on a terrorist watch list. Deploying air marshals to gather intelligence on civilians not on a terrorist watch list is a new assignment, one that some air marshals say goes beyond the mandate of the US Federal Air Marshal Service. Some also worry that such domestic surveillance might be illegal. Between 2,000 and 3,000 men and women, so-called flying FAMs, work the skies.

Since this initiative launched in March, dozens of air marshals have raised concerns about the Quiet Skies program with senior officials and colleagues, sought legal counsel, and expressed misgivings about the surveillance program, according to interviews and documents reviewed by the Globe.



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“What we are doing [in Quiet Skies] is troubling and raising some serious questions as to the validity and legality of what we are doing and how we are doing it,” one air marshal wrote in a text message to colleagues.

The TSA, while declining to discuss details of the Quiet Skies program, did address generally how the agency pursues its work.

“FAMs [federal air marshals] may deploy on flights in furtherance of the TSA mission to ensure the safety and security of passengers, crewmembers, and aircraft throughout the aviation sector,” spokesman James Gregory said in an e-mailed statement. “As its assessment capabilities continue to enhance, FAMS leverages multiple internal and external intelligence sources in its deployment strategy.”

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Scott LaPierre/Globe Staff

Agency documents show there are about 40 to 50 Quiet Skies passengers on domestic flights each day. On average, air marshals follow and surveil about 35 of them.

In late May, an air marshal complained to colleagues about having just surveilled a working Southwest Airlines flight attendant as part of a Quiet Skies mission. “Cannot make this up,” the air marshal wrote in a message.

One colleague replied: “jeez we need to have an easy way to document this nonsense. Congress needs to know that it’s gone from bad to worse.”

Experts on civil liberties called the Quiet Skies program worrisome and potentially illegal.

“These revelations raise profound concerns about whether TSA is conducting pervasive surveillance of travelers without any suspicion of actual wrongdoing,” said Hugh Handeyside, senior staff attorney with the American Civil Liberties Union’s National Security Project.

“If TSA is using proxies for race or religion to single out travelers for surveillance, that could violate the travelers’ constitutional rights.

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using unreliable and unscientific techniques to screen and monitor travelers who have done nothing wrong.”

George Washington University law professor Jonathan Turley said Quiet Skies touches on several sensitive legal issues and appears to fall into a gray area of privacy law.

If this was about foreign citizens, the government would have considerable power. But if it’s US citizens — US citizens don’t lose their rights simply because they are in an airplane at 30,000 feet.

– Jonathan Turley, George Washington University law professor

“If this was about foreign citizens, the government would have considerable power. But if it’s US citizens — US citizens don’t lose their rights simply because they are in an airplane at 30,000 feet,” Turley said. “There may be indeed constitutional issues here depending on how restrictive or intrusive these measures are.”

Turley, who has testified before Congress on privacy protection, said the issue could trigger a “transformative legal fight.”

Geoffrey Stone, a University of Chicago law professor chosen by President Obama in 2013 to help review foreign intelligence surveillance programs, said the program could pass legal muster if the selection criteria are sufficiently broad. But if the program targets by nationality or race, it could violate equal protection rights, Stone said.

Asked about the legal basis for the Quiet Skies program, Gregory, the agency's spokesman, said TSA "maintains a robust engagement with congressional committees to ensure maximum support and awareness" of its effort to keep the aviation sector safe. He declined to comment further.



Chip Somodevilla/Getty Images

Beyond the legalities, some air marshals believe Quiet Skies is not a sound use of limited agency resources.

Several air marshals, who spoke on the condition of anonymity because they are not authorized to speak publicly, told the Globe the program wastes taxpayer dollars and makes the country less safe because attention and resources are diverted away from legitimate

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potential threats. The US Federal Air Marshal Service, which is part of TSA and falls under the Department of Homeland Security, has a mandate to protect airline passengers and crew against the risk of criminal and terrorist violence.

John Casaretti, president of the Air Marshal Association, said in a statement: “The Air Marshal Association believes that missions based on recognized intelligence, or in support of ongoing federal investigations, is the proper criteria for flight scheduling. Currently the Quiet Skies program does not meet the criteria we find acceptable.

“The American public would be better served if these [air marshals] were instead assigned to airport screening and check in areas so that active shooter events can be swiftly ended, and violations of federal crimes can be properly and consistently addressed.”

These revelations raise profound concerns about whether TSA is conducting pervasive surveillance of travelers without any suspicion of actual wrongdoing.

— Hugh Handeyside, American Civil Liberties Union’s National Security Project

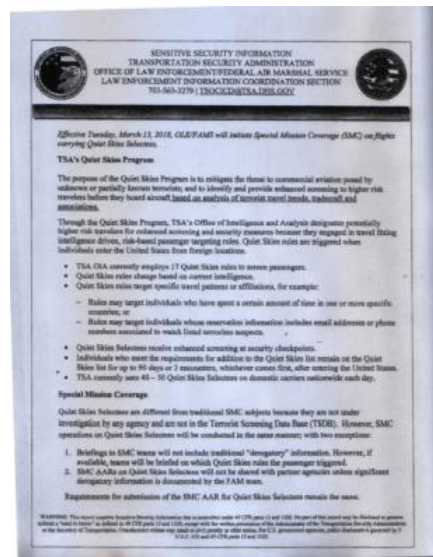
TSA has come under increased scrutiny from Congress since a 2017 Government Accountability Office report raised questions about its management of the Federal Air Marshal Service. Requested by Congress, the report noted that the agency, which spent \$800 million in 2015, has “no information” on its effectiveness in deterring attacks.

Late last year, Representative Jody Hice, a Georgia Republican, introduced a bill that would require the Federal Air Marshal Service to better incorporate risk assessment in its deployment strategy, provide detailed metrics on flight assignments, and report data back to Congress.

Without this information, Congress, TSA, and the Department of Homeland Security “are not able to effectively conduct oversight” of the air marshals, Hice wrote in a letter to colleagues.

“With threats coming at us left and right, our focus should be on implementing effective, evidence-based means of deterring, detecting, and disrupting plots hatched by our enemies.”

Hice’s bill, the “Strengthening Aviation Security Act of 2017,” passed the House and is awaiting consideration by the full Senate.



[Read the bulletin](#)

The Globe, in its review of Quiet Skies, examined numerous TSA internal bulletins, directives, and internal communications, and interviewed more than a dozen people with direct knowledge of the program.

The purpose of Quiet Skies is to decrease threats by “unknown or partially known terrorists; and to identify and provide enhanced screening to higher risk travelers before they board aircraft based on analysis of terrorist travel trends, tradecraft and associations,” according to a TSA internal bulletin.

The criteria for surveillance appear fluid. Internal agency e-mails show some confusion about the program’s parameters and implementation.

The screenshot shows a document with a dark background and white text. At the top, there are two bullet points: 'Individuals who meet the requirements for addition to the Quiet Skies list remain on the Quiet Skies list for up to 90 days or 3 encounters, whichever comes first, after entering the United States.' and 'TSA currently sees 40 – 50 Quiet Skies Selectees on domestic carriers nationwide each day.' Below this is a section header 'Special Mission Coverage'. Under this header, a yellow rectangular box highlights the text: 'Quiet Skies Selectees are different from traditional SMC subjects because they are not under investigation by any agency and are not in the Terrorist Screening Data Base (TSDB). However, SMC operations on Quiet Skies Selectees will be conducted in the same manner, with two exceptions:'. Below the highlighted text is a numbered list with two items: '1. Briefings to SMC teams will not include traditional “derogatory” information. However, if available, teams will be briefed on which Quiet Skies rules the passenger triggered.' and '2. SMC AARs on Quiet Skies Selectees will not be shared with partner agencies unless significant derogatory information is documented by the FAM team.' Below the list is the text 'Requirements for submission of the SMC AAR for Quiet Skies Selectees remain the same.' At the bottom of the document is a 'WARNING' section in small text: 'WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a “need to know,” as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.'

- Individuals who meet the requirements for addition to the Quiet Skies list remain on the Quiet Skies list for up to 90 days or 3 encounters, whichever comes first, after entering the United States.
- TSA currently sees 40 – 50 Quiet Skies Selectees on domestic carriers nationwide each day.

Special Mission Coverage

Quiet Skies Selectees are different from traditional SMC subjects because they are not under investigation by any agency and are not in the Terrorist Screening Data Base (TSDB). However, SMC operations on Quiet Skies Selectees will be conducted in the same manner, with two exceptions:

1. Briefings to SMC teams will not include traditional “derogatory” information. However, if available, teams will be briefed on which Quiet Skies rules the passenger triggered.
2. SMC AARs on Quiet Skies Selectees will not be shared with partner agencies unless significant derogatory information is documented by the FAM team.

Requirements for submission of the SMC AAR for Quiet Skies Selectees remain the same.

WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a “need to know,” as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.

Quiet Skies focuses on a person's international travel patterns and potential affiliations. Passengers are not under investigation and their names are not on a terrorist watch list or in a screening database.

Air marshals have surveilled a businesswoman, a Southwest Airlines flight attendant, and a fellow federal law enforcement officer, sources said.

A bulletin in May notes that travelers entering the United States may be added to the Quiet Skies watch list if their “international travel patterns [sic] or behaviors match the travel routing and tradecraft of known or suspected terrorists” or “are possibly affiliated with Watch Listed suspects.”

Travelers remain on the Quiet Skies watch list “for up to 90 days or three encounters, whichever comes first, after entering the United States,” agency documents show.

Travelers are not notified when they are placed on the watch list or have their activity and behavior monitored.

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Quiet Skies surveillance is an expansion of a long-running practice in which federal air marshals are assigned to surveil the subject of an open FBI terrorism investigation.

In such assignments, air marshal reports are relayed back to the FBI or another outside law enforcement agency. In Quiet Skies, these same reports are completed in the same manner but stay within TSA, agency documents show, and details are shared with outside agencies only if air marshals observe “significant derogatory information.”



Pat Greenhouse/Globe Staff

According to a TSA bulletin, the program may target people who have spent a certain amount of time in one or more specific countries or whose reservation information includes e-mail addresses or phone numbers associated to suspects on a terrorism watch list.

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The bulletin does not list the specific countries, but air marshals have been advised in several instances to follow passengers because of past travel to Turkey, according to people with direct knowledge of the program.

One air marshal described an assignment to conduct a Quiet Skies mission on a young executive from a major company.

“Her crime apparently was she flew to Turkey in the past,” the air marshal said, noting that many international companies have executives travel through Turkey.

“According to the government’s own [Department of Justice] standards there is no cause to be conducting these secret missions.”

Jana Winter can be reached at jana.winter@globe.com and on Twitter [@JanaWinter](https://twitter.com/JanaWinter). This investigation was made possible through the Spotlight Investigative Journalism Fellowship, a social impact initiative of [Participant Media](https://www.participantmedia.com/). For more, go to www.spotlightfellowship.com.

Join the discussion

Design and development: Saurabh Datar and Irfan Uraizee

Audience engagement: Heather Ciras

Photo editor: Leanne Burden Seidel

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Exhibit B



SENSITIVE SECURITY INFORMATION
TRANSPORTATION SECURITY ADMINISTRATION
OFFICE OF LAW ENFORCEMENT/FEDERAL AIR MARSHAL SERVICE
LAW ENFORCEMENT INFORMATION COORDINATION SECTION
703-563-3279 | TSOCICD@TSA.DHS.GOV



Information Bulletin – Quiet Skies Selectees

March 13, 2018

Effective Tuesday, March 13, 2018, OLE/FAMS will initiate Special Mission Coverage (SMC) on flights carrying Quiet Skies Selectees.

TSA's Quiet Skies Program

The purpose of the Quiet Skies Program is to mitigate the threat to commercial aviation posed by unknown or partially known terrorists; and to identify and provide enhanced screening to higher risk travelers before they board aircraft based on analysis of terrorist travel trends, tradecraft and associations.

Through the Quiet Skies Program, TSA's Office of Intelligence and Analysis designates potentially higher risk travelers for enhanced screening and security measures because they engaged in travel fitting intelligence driven, risk-based passenger targeting rules. Quiet Skies rules are triggered when individuals enter the United States from foreign locations.

- TSA OIA currently employs 17 Quiet Skies rules to screen passengers.
- Quiet Skies rules change based on current intelligence.
- Quiet Skies rules target specific travel patterns or affiliations, for example:
 - Rules may target individuals who have spent a certain amount of time in one or more specific countries; or
 - Rules may target individuals whose reservation information includes email addresses or phone numbers associated to watch listed terrorism suspects.
- Quiet Skies Selectees receive enhanced screening at security checkpoints.
- Individuals who meet the requirements for addition to the Quiet Skies list remain on the Quiet Skies list for up to 90 days or 3 encounters, whichever comes first, after entering the United States.
- TSA currently sees 40 – 50 Quiet Skies Selectees on domestic carriers nationwide each day.

Special Mission Coverage

Quiet Skies Selectees are different from traditional SMC subjects because they are not under investigation by any agency and are not in the Terrorist Screening Data Base (TSDB). However, SMC operations on Quiet Skies Selectees will be conducted in the same manner; with two exceptions:

1. Briefings to SMC teams will not include traditional "derogatory" information. However, if available, teams will be briefed on which Quiet Skies rules the passenger triggered.
2. SMC AARs on Quiet Skies Selectees will not be shared with partner agencies unless significant derogatory information is documented by the FAM team.

Requirements for submission of the SMC AAR for Quiet Skies Selectees remain the same.

Exhibit C

Subject was continuously aware of surroundings. (If observed, check any that apply)		Y N Unknown
Reversing or changing directions and/or stopping while in transit through the airport Attempting to change appearance by changing clothes, shaving etc. while in the airport or on the plane Using the reflection in storefront windows to identify surveillance Observing the boarding gate area from afar Boarded last Observing other people who appear to be observing FAM team and/or subject		
Subject exhibited Behavioral Indicators. (If observed, check any that apply below)		Y N Unknown
Excessive fidgeting Excessive perspiration Facial flushing Rapid eye blinking "Adam's apple jump"	Rubbing/wringing of hands Strong body odor Sweaty palms Trembling Cold penetrating stare	Exaggerated emotion Gripping / "White knuckling" bags Wide open, staring eyes Face touching Other
Subject's appearance was different from information provided. (If yes, check any that apply below)		Y N Unknown
Lost weight Gained weight Balding Graying Hair length/style change	Goatee Visible Tattoos (Describe) Visible Piercings (Describe) Beard Mustache	Apparent Altered Appearance (Explain) Clean shaven Other
1. Subject slept during flight. (If yes, check any that apply below)		Y N Unknown
Subject slept during most of the flight Subject slept briefly		
5. General Observations (provide detailed description of any electronic devices in subject's possession in AAR)		
Checked baggage? In possession of cell/smartphone? In possession of multiple phones? Used phone to talk? Used phone to text? In possession of computer? Used computer? Seated in first/business class?	Y N Unknown Y N Unknown Y N Unknown Y N Unknown Y N Unknown Y N Unknown Y N Unknown Y N Unknown	Used lavatory? In possession any unusual items? Traveled with others? Met with others in the airport? Engaged in conversation with others? Subject initiated conversation with FAM? Carryon baggage? Other notable activity?
Subject engaged in "more than casual contact" with airport or airline employee?		Y N Unknown
6. For Domestic Arrivals Only		
Picked up at curbside by shuttle, taxi, bus or public transit? Picked up at curbside by private vehicle? Obtained rental car for transportation?	Y N Unknown Y N Unknown Y N Unknown	If possible, provide identification plate, vehicle description, vehicle in AAR.

Exhibit D



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Transcript of Hao-Y Froemling, Corporate Designee

Date: March 20, 2018

Case: El Hady, et al. -v- Kable, et al.

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www.planetdepos.com

Transcript of Hao-Y Froemling, Corporate Designee
Conducted on March 20, 2018

1 (1 to 4)

1	3
1 UNITED STATES DISTRICT COURT	1 A P P E A R A N C E S
2 EASTERN DISTRICT OF VIRGINIA	2 ON BEHALF OF THE PLAINTIFF, EL HADY:
3 ALEXANDRIA DIVISION	3 CAROLYN HOMER, ESQUIRE
4 - - - - - x	4 LENA MASRI, ESQUIRE
5 ANAS EL HADY, et al., :	5 GADEIR ABBAS, ESQUIRE
6 Plaintiffs, :	6 AHMED MOHAMED, ESQUIRE
7 v. : Case No.	7 COUNCIL ON AMERICAN-ISLAMIC RELATIONS
8 CHARLES H. KABLE, Director of the : 16-cv-00375	8 453 New Jersey Avenue, S.E.
9 Terrorist Screening Center; :	9 Washington, District of Columbia 20003
10 in his official capacity, et al., :	10 (202) 516-4724
11 Defendants. :	11
12 - - - - - x	12 ON BEHALF OF THE DEFENDANT, KABLE:
13	13 ANTONIA KONKOLY, ESQUIRE
14 Videotaped Deposition of TSA	14 DENA ROTH, ESQUIRE
15 By and Through its Designated Representative	15 U.S. DEPARTMENT OF JUSTICE
16 HAO-Y FROEMLING	16 CIVIL DIVISION
17 Arlington, Virginia	17 2100 Jamieson Avenue
18 Tuesday, March 20, 2018	18 Alexandria, Virginia 22314
19 9:29 a.m.	19 (202) 514-2000
20 Job No.: 182337	20
21 Pages: 1 - 369	21
22 Reported By: Tasiana T. Basdekis, RPR	22
2	4
1 Videotaped deposition of HAO-Y FROEMLING, held	1 A P P E A R A N C E S C O N T I N U E D
2 at the offices of:	2 ON BEHALF OF THE DEFENDANT, KABLE:
3	3 JENNIFER GREENBAND, ESQUIRE
4	4 KEVIN BOGUCKI, ESQUIRE
5 TRANSPORTATION SECURITY ADMINISTRATION	5 JOSEPH CLARK, ESQUIRE
6 601 South 12th Street	6 KATHLEEN GANNON, ESQUIRE
7 East Tower	7 U.S. DEPARTMENT OF JUSTICE
8 Arlington, Virginia 20598	8 TRANSPORTATION SECURITY ADMINISTRATION
9	9 601 12th Street South
10	10 Arlington, Virginia 20598
11	11
12	12 ALSO PRESENT:
13 Pursuant to notice, before Tasiana T. Basdekis,	13 JOE DONOHUE, Videographer
14 RPR, Notary Public in and for the Commonwealth of	14
15 Virginia.	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22

Transcript of Hao-Y Froemling, Corporate Designee
Conducted on March 20, 2018

2 (5 to 8)

5	7
<p>1 C O N T E N T S</p> <p>2</p> <p>3 EXAMINATION OF HAO-Y FROEMLING PAGE</p> <p>4 By Ms. Homer 7</p> <p>5</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 (Attached)</p> <p>9 PLAINTIFF'S FOR IDENTIFICATION PAGE</p> <p>10 1 Hao-Y Froemling Notice of Deposition 11</p> <p>11 2 2014 GAO Report 132</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 Plaintiffs.</p> <p>2 MR. MOHAMED: Ahmed Mohamed on behalf of</p> <p>3 Plaintiffs.</p> <p>4 MS. KONKOLY: Antonia Konkoly from the</p> <p>5 Department of Justice on behalf of Defendants.</p> <p>6 MS. GREENBAND: Jennifer Greenband, TSA.</p> <p>7 MR. BOGUCKI: Kevin Bogucki, TSC.</p> <p>8 MS. ROTH: Dena Roth, Department of</p> <p>9 Justice.</p> <p>10 MR. CLARK: Joseph Clark, U.S. Customs and</p> <p>11 Border Protection.</p> <p>12 MS. GANNON: Kathleen Gannon, TSA.</p> <p>13 THE VIDEOGRAPHER: Would the court please</p> <p>14 swear in the witness.</p> <p>15 Whereupon,</p> <p>16 HAO-Y FROEMLING,</p> <p>17 being first duly sworn or affirmed to testify to</p> <p>18 the truth, the whole truth, and nothing but the</p> <p>19 truth, was examined and testified as follows:</p> <p>20 EXAMINATION</p> <p>21 BY MS. HOMER:</p> <p>22 Q Good morning, Ms. Froemling. Can you</p>
6	8
<p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: Here begins disk number</p> <p>3 one in the videotaped deposition of Hao-Y</p> <p>4 Froemling in the matter of Elhady, et al., v.</p> <p>5 Kable, et al., in the United States District Court</p> <p>6 for the Eastern District of Virginia, Case No.</p> <p>7 16-cv-375.</p> <p>8 Today's date is March 20th, 2018, and the</p> <p>9 time on the video monitor is 9:29 a.m.</p> <p>10 The videographer today is Joe Donahoe,</p> <p>11 representing Planet Depos, and this videotaped</p> <p>12 deposition is taking place at 601 South 12th</p> <p>13 Street, Arlington, Virginia.</p> <p>14 Would counsel please voice-identify</p> <p>15 themselves and state whom they represent?</p> <p>16 MS. HOMER: Hi. I'm Carolyn Homer from</p> <p>17 the Counsel on American-Islamic Relations on</p> <p>18 behalf of the Plaintiffs.</p> <p>19 MS. MASRI: Lena Masri on behalf of the</p> <p>20 Plaintiffs.</p> <p>21 MS. KONKOLY: Antonia Konkoly from --</p> <p>22 MR. ABBAS: Gadeir Abbas on behalf of the</p>	<p>1 please state your full name for the record.</p> <p>2 A It's Hao-Y Tran Froemling.</p> <p>3 Q Have you ever been deposed before?</p> <p>4 A No.</p> <p>5 Q So I'm going to cover some quick ground</p> <p>6 rules that you may have already previously covered</p> <p>7 with your attorney, but you recognize that you are</p> <p>8 under oath today?</p> <p>9 A Yes.</p> <p>10 Q And that you're obliged to tell the truth?</p> <p>11 A Yes.</p> <p>12 Q Is there any medical or other reason why</p> <p>13 you are unable to provide complete and truthful</p> <p>14 testimony today?</p> <p>15 A No.</p> <p>16 Q You're already doing a good job of this,</p> <p>17 but because everything is being transcribed, the</p> <p>18 court reporter will need clear yes or no or stated</p> <p>19 answers. So can you try not to just nod or</p> <p>20 mm-hms?</p> <p>21 A Okay. Yes.</p> <p>22 Q Okay. And we're trying to have a</p>

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<p style="text-align: right;">181</p> <p>1 additional screening that is conducted after the 2 checkpoint? 3 MS. KONKOLY: Objection; vague. Okay 4 insofar as the answer calls for information 5 protected by SSI or law enforcement. 6 You can answer, if you can. 7 THE WITNESS: Generally, screening -- 8 generally speaking, I wouldn't say there's a 9 specific name for the different security measures 10 that we -- that may occur after the checkpoint. 11 There's not a name given for that. 12 BY MS. HOMER: 13 Q So when you use the term "enhanced 14 screening," is that term limited to 15 out-of-the-ordinary screening conducted at a 16 checkpoint, or does it also encompass screening 17 that may occur after the passenger has left the 18 checkpoint? 19 MS. KONKOLY: Objection; vague. Objection 20 insofar as the question calls for information 21 protected by SSI or the law enforcement privilege. 22 You can answer, to the extent that you</p>	<p style="text-align: right;">183</p> <p>1 multiple security measures, some of which occur 2 post-security screening, and they can occur in 3 different areas of the sterile areas of the 4 airport to include screening measures at the gate. 5 Otherwise -- at a high level, yeah. 6 BY MS. HOMER: 7 Q And what types of security procedures are 8 those? 9 MS. KONKOLY: Objection; asked and 10 answered. Objection insofar as the question calls 11 for information protected by SSI or the law 12 enforcement privilege. 13 Again, you can answer to the extent that 14 you can without waiving any privilege. 15 THE WITNESS: At a high level, it could be 16 -- TSA has multiple security measures that it may 17 employ. 18 To go into more details beyond what was 19 already stated, would get into SSI. 20 Q Are there any post-checkpoint screening 21 procedures applied as a matter of course to 22 individuals on the Selectee List?</p>
<p style="text-align: right;">182</p> <p>1 can. 2 THE WITNESS: I believe my understanding 3 is that enhanced screening is primarily used for 4 -- at the checkpoint. 5 BY MS. HOMER: 6 Q Okay. What term do you use to describe 7 post-checkpoint screening? 8 MS. KONKOLY: Objection; vague. 9 Objection; scope. 10 THE WITNESS: There's not any one term. 11 TSA deploys multiple security measures 12 post-checkpoint screening that may occur to, 13 really, any passenger. So there's not any one 14 term post-security screening. 15 Q What sorts of post-security screening 16 measures does the TSA undertake, generally? 17 MS. KONKOLY: Objection insofar as that 18 question calls for information protected by SSI or 19 the law enforcement privilege. Objection; vague. 20 You can answer, to the extent that you 21 can. 22 THE WITNESS: At a high level, TSA has</p>	<p style="text-align: right;">184</p> <p>1 MS. KONKOLY: Objection. That information 2 calls for -- or that question calls for 3 information protected by SSI and the law 4 enforcement privilege. 5 I'm going to instruct the Witness not to 6 answer that. 7 BY MS. HOMER: 8 Q Does the TSA annotate any individual 9 records in Secure Flight that post-checkpoint 10 screening of that individual is required? 11 MS. KONKOLY: Objection; vague. 12 Objection; that calls for information protected by 13 SSI and the law enforcement privilege. 14 I will instruct the Witness not to answer. 15 THE WITNESS: Okay. 16 Q Does the TSA use screening of individuals 17 on the TSDB list as an opportunity to collect 18 intelligence on those listees? 19 MS. KONKOLY: Objection; vague, 20 misleading. Objection insofar as the question 21 calls for any information protected by SSI or the 22 law enforcement privilege.</p>

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<p>185</p> <p>1 You can answer, if you can.</p> <p>2 THE WITNESS: So to rephrase: Versus --</p> <p>3 using it as an opportunity to collect intelligence</p> <p>4 information? No, we do not perform intelligence</p> <p>5 collection on passengers at the airport.</p> <p>6 So -- yeah.</p> <p>7 BY MS. HOMER:</p> <p>8 Q The TSA reports on encounters it has with</p> <p>9 TSDB listees to the TSC; correct?</p> <p>10 A Yes.</p> <p>11 Q Do that -- does the TSA's report on those</p> <p>12 encounters contain any comments about the</p> <p>13 encounter, including any conversations the TSA may</p> <p>14 have had with the listee?</p> <p>15 MS. KONKOLY: Objection; vague. Objection</p> <p>16 insofar as the answer calls for any information</p> <p>17 protected by SSI or the law enforcement privilege.</p> <p>18 You can answer, if you can.</p> <p>19 THE WITNESS: So at a high level, we</p> <p>20 communicate the encounter, which would be the</p> <p>21 passenger information, flight information, and to</p> <p>22 the extent of did they check in. That is the</p>	<p>187</p> <p>1 enforcement-sensitive information.</p> <p>2 BY MS. HOMER:</p> <p>3 Q Are encounters with persons listed on the</p> <p>4 TSDB reported automatically to the TSC?</p> <p>5 A So not 100 percent automatic. There is</p> <p>6 always a review and an actual TSA person that is</p> <p>7 acknowledging, okay, we are sending information to</p> <p>8 the TSC.</p> <p>9 So does --</p> <p>10 Q Okay. Is the information that the TSA is</p> <p>11 reporting to the TSC on encounters populated</p> <p>12 automatically, even though it is then subject to</p> <p>13 review by a TSA employee before actually being</p> <p>14 sent to the TSC?</p> <p>15 MS. KONKOLY: Objection; vague. Objection</p> <p>16 insofar as the question calls for information</p> <p>17 protected by SSI or the law enforcement privilege.</p> <p>18 You can answer, if you can.</p> <p>19 THE WITNESS: So there is certain</p> <p>20 information that is -- that the system pulls</p> <p>21 together, to an extent, but there is always an</p> <p>22 individual who is effectively confirming and</p>
<p>186</p> <p>1 general information that we are providing to the</p> <p>2 TSC on our encounter.</p> <p>3 BY MS. HOMER:</p> <p>4 Q Does the TSA have the option to add</p> <p>5 additional information about the encounter in</p> <p>6 notations to the TSC?</p> <p>7 MS. KONKOLY: Objection; vague. Objection</p> <p>8 insofar as the question calls for information</p> <p>9 protected by the law enforcement privilege or SSI.</p> <p>10 You can answer, if you can.</p> <p>11 THE WITNESS: So the question is can it be</p> <p>12 annotated in our notifications to the TSC</p> <p>13 additional information --</p> <p>14 Q Than what you report automatically --</p> <p>15 A -- than what is standardly --</p> <p>16 Q -- or regularly.</p> <p>17 A -- reported?</p> <p>18 MS. KONKOLY: Same objections.</p> <p>19 THE WITNESS: At a high level, it would</p> <p>20 depend on the situation if there was law</p> <p>21 enforcement or other related information. Other</p> <p>22 than that, we would be getting into SSI and law</p>	<p>188</p> <p>1 populating some of the information before it is</p> <p>2 sent to the TSC.</p> <p>3 BY MS. HOMER:</p> <p>4 Q And does that individual, or any TSA</p> <p>5 individual, manually type in any notes about the</p> <p>6 encounter before sending it to the TSC?</p> <p>7 MS. KONKOLY: Objection; vague. Objection</p> <p>8 insofar as the question calls for information</p> <p>9 protected by the law enforcement privilege or SSI.</p> <p>10 You can answer, if you can.</p> <p>11 THE WITNESS: So generally speaking, no.</p> <p>12 We're providing the passenger and itinerary</p> <p>13 information, as discussed earlier, in our</p> <p>14 notifications to the TSC.</p> <p>15 Q Is there a box or field within the</p> <p>16 encounter reporting system where a TSA employee</p> <p>17 has an option to add detailed notes about the</p> <p>18 encounter before sending it to the TSC?</p> <p>19 MS. KONKOLY: Objection; vague.</p> <p>20 Objection; asked and answered. Objection insofar</p> <p>21 as the question calls for information protected by</p> <p>22 SSI or the law enforcement privilege.</p>

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<p style="text-align: right;">201</p> <p>1 also designated as being on the Expanded Selectee 2 List? 3 MS. KONKOLY: Objection; vague. 4 Objection; mischaracterizes prior testimony. 5 Objection insofar as the question calls for 6 anything implicated -- or I should say protected 7 by SSI or the law enforcement privilege. 8 You can answer, if you can. 9 THE WITNESS: So two parts. TSA receives 10 its export of the TSDB. Secure Flight's passenger 11 prescreening does receive the list with the full 12 name and date of birth in that list; however, 13 going into the criteria of which of the lists, or 14 how they're there, I cannot speak further. If I 15 understood the question correctly. 16 BY MS. HOMER: 17 Q Does the description of the Expanded 18 Selectee List that this document contains in the 19 top paragraph of page 14, is that a complete 20 description of what constitutes the Expanded 21 Selectee List? 22 MS. KONKOLY: I'll object as to scope.</p>	<p style="text-align: right;">203</p> <p>1 A Okay. 2 MS. KONKOLY: How long do you guys want to 3 take? 4 MR. CLARK: Go off the record. 5 THE VIDEOGRAPHER: We are going off the 6 record. The time is 1:39 p.m. 7 (A recess was taken from 1:39 p.m. to 2:43 8 p.m.) 9 THE VIDEOGRAPHER: Here begins disk number 10 three in the videotaped deposition of Hao-Y 11 Froemling. 12 The time on the video monitor is 13 2:43 p.m., and we have been on the record for 14 three hours and 41 minutes. 15 MS. KONKOLY: Counsel, if I may, there 16 were two points that we'd like to just add 17 clarifications on the record with your leave. 18 MS. HOMER: Please do. 19 BY MS. KONKOLY: 20 Q Okay. First, Ms. Froemling, right before 21 the break you were discussing with Plaintiffs' 22 counsel what was introduced as Exhibit No. 2, a</p>
<p style="text-align: right;">202</p> <p>1 Objection; vague. 2 You can answer, if you can. 3 And insofar as it calls for any 4 information protected by SSI or law enforcement 5 privilege. 6 You can answer, if you can. 7 THE WITNESS: Right. I don't know if I 8 can answer for a complete description, but to the 9 extent -- without getting into SSI or law 10 enforcement information -- it -- that is an 11 accurate description. 12 BY MS. HOMER: 13 Q Does the TSA currently use the Expanded 14 Selectee List to determine that passengers are 15 subject to enhanced screening? 16 A Yes. The Secure Flight system does use 17 the Expanded Selectee List as part of its 18 determination of whether a passenger should 19 receive enhanced screening or not. 20 Q Okay. 21 I think that's a good breaking point for 22 lunch.</p>	<p style="text-align: right;">204</p> <p>1 GAO report. Can I have you turn to page 14 of 2 that report again? 3 Okay. Do you see the paragraph at the 4 top, the Expanded Selectee List that you were 5 discussing with Plaintiffs' counsel right before 6 the break? 7 A Yes. 8 Q Okay. And does the definition of the 9 Expanded Selectee List offered in this paragraph 10 offer a complete and accurate definition of that 11 list? 12 A Yes. 13 Q Okay. 14 Second point of clarification from earlier 15 this morning, over the lunch break were you able 16 to confirm the number of intelligence analysts 17 employed by TSA who both conduct watchlist 18 matching and have access to the underlying 19 derogatory information? 20 A Yes. It's 68. 21 Q Okay. Thank you. 22 MS. HOMER: Thank you.</p>

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<p style="text-align: right;">205</p> <p>1 Q So continuing with Exhibit 2, going back</p> <p>2 to page 19 above where we were where -- within</p> <p>3 high risk, we had just finished talking about the</p> <p>4 Expanded Selectee List.</p> <p>5 And above that it says "rules-based list."</p> <p>6 What is a rules-based list that the TSA uses to</p> <p>7 designate passengers for enhanced screening?</p> <p>8 MS. KONKOLY: I'm going to offer an</p> <p>9 objection based on scope. Additionally, to the</p> <p>10 extent that the information would call for</p> <p>11 information protected by SSI or law</p> <p>12 enforcement-protected privilege.</p> <p>13 You can answer, to the extent that you</p> <p>14 can.</p> <p>15 THE WITNESS: Okay. Sorry. So at a high</p> <p>16 level, similar to our discussion about the</p> <p>17 low-risk rules risk assessments, we also have high</p> <p>18 risk, where I mentioned before there may be</p> <p>19 particular circumstances of a passenger's travel.</p> <p>20 TSA, on a flight-by-flight basis, also has</p> <p>21 intelligence-based or derived information where we</p> <p>22 would identify criteria that may designate a</p>	<p style="text-align: right;">207</p> <p>1 rules, is that a basis for the TSA to then</p> <p>2 nominate them to the TSDB?</p> <p>3 MS. KONKOLY: Objection; vague. Objection</p> <p>4 insofar as the question calls for information</p> <p>5 protected by SSI or the law enforcement privilege.</p> <p>6 You can answer, to the extent that you</p> <p>7 can.</p> <p>8 THE WITNESS: So not directly. TSA</p> <p>9 follows very specific processes and information</p> <p>10 review to determine if they meet the criteria for</p> <p>11 watchlist nominations.</p> <p>12 There may be information, as a pointer, or</p> <p>13 others that may then lead TSA in its determination</p> <p>14 to go to watchlist matching. But the rules by</p> <p>15 themselves do not provide the basis for TSA</p> <p>16 watchlist nominations.</p> <p>17 BY MS. HOMER:</p> <p>18 Q If an individual, through the operation of</p> <p>19 the rule, is designated as high-risk for a</p> <p>20 particular flight, does the TSA have a systematic</p> <p>21 process for reviewing other individual -- like,</p> <p>22 for reviewing other information about those</p>
<p style="text-align: right;">206</p> <p>1 passenger for -- as high risk.</p> <p>2 BY MS. HOMER:</p> <p>3 Q Does the TSA maintain a single list of</p> <p>4 individuals who, through the operation of rules,</p> <p>5 are designated for enhanced screening, or is this</p> <p>6 a case-by-case automatic assignment?</p> <p>7 MS. KONKOLY: Objection as to scope.</p> <p>8 Objection; vague. Objection insofar as the</p> <p>9 question calls for information protected either by</p> <p>10 SSI or the law enforcement privilege.</p> <p>11 But you can answer, to the extent that you</p> <p>12 can.</p> <p>13 THE WITNESS: So it is not a list direct,</p> <p>14 similar to our watchlist matching. It is</p> <p>15 rules-driven based on the particular travel --</p> <p>16 passenger circumstances of travel.</p> <p>17 So -- yeah, so it's a flight-by-flight</p> <p>18 distinction of identifying passengers that may be</p> <p>19 designated as high-risk based on the set of rules.</p> <p>20 Q Can a passenger -- start over.</p> <p>21 If a passenger is determined to be</p> <p>22 high-risk on the basis of these flight-by-flight</p>	<p style="text-align: right;">208</p> <p>1 individuals in order to determine whether or not</p> <p>2 the TSA should nominate that individual to a</p> <p>3 watchlist?</p> <p>4 MS. KONKOLY: Objection; vague. Objection</p> <p>5 insofar as the answer calls for information</p> <p>6 protected by SSI or the law enforcement privilege.</p> <p>7 You can answer, to the extent that you</p> <p>8 can.</p> <p>9 THE WITNESS: So if I understand the</p> <p>10 question, TSA does not have a specific procedure</p> <p>11 to say every passenger, if they've been identified</p> <p>12 as high-risk, automatically pull them into a</p> <p>13 review for watchlist nominations.</p> <p>14 TSA, for the watchlist nominations, just</p> <p>15 pulls in multiple pieces of information. It may</p> <p>16 sometimes include information from the rules-based</p> <p>17 resultant information, but I would not say that</p> <p>18 that one thing direct from the rules drives the</p> <p>19 watchlist nomination process.</p> <p>20 BY MS. HOMER:</p> <p>21 Q So there are circumstances where an</p> <p>22 individual's inclusion on a rules-based list</p>

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<p style="text-align: right;">209</p> <p>1 identifying that individual for further screening</p> <p>2 could lead to the TSA's investigation of that</p> <p>3 individual for potential inclusion upon the</p> <p>4 watchlist?</p> <p>5 MS. KONKOLY: Objection; vague.</p> <p>6 Objection; mischaracterizes prior testimony.</p> <p>7 Objection insofar as the answer calls for</p> <p>8 information protected by the law enforcement</p> <p>9 privilege or SSI.</p> <p>10 You can answer, to the extent that you</p> <p>11 can.</p> <p>12 THE WITNESS: So -- I'm trying to think.</p> <p>13 So, generally speaking, that information</p> <p>14 of the designation for a higher-risk passenger</p> <p>15 does not directly go to watchlist.</p> <p>16 However, in the course of just TSA's</p> <p>17 overall security processes, additional information</p> <p>18 comes in or passengers are then subsequently</p> <p>19 identified as -- are detecting something as</p> <p>20 they're going through screening -- additional</p> <p>21 prohibited items or additional information or</p> <p>22 other investigation or other just information</p>	<p style="text-align: right;">211</p> <p>1 high-risk.</p> <p>2 There may be other pieces of information</p> <p>3 that would feed into Secure Flight that then --</p> <p>4 for Secure Flight to then apply rules. So --</p> <p>5 BY MS. HOMER:</p> <p>6 Q Okay. Is Secure --</p> <p>7 A So not always.</p> <p>8 Q Okay. Is Secure Flight matching names on</p> <p>9 itineraries to names generated by a rules-based</p> <p>10 list?</p> <p>11 MS. KONKOLY: Objection; vague, and</p> <p>12 insofar as the answer calls for any information</p> <p>13 protected by law enforcement privilege or SSI.</p> <p>14 But you can answer, if you can.</p> <p>15 THE WITNESS: I would say sometimes,</p> <p>16 depending on the rules. We are matching -- it's</p> <p>17 more of the matching the passenger to the</p> <p>18 rules-based list.</p> <p>19 From an itinerary perspective, it may or</p> <p>20 may not come into play, depending on the -- sorry.</p> <p>21 There's just the different rules. It depends.</p> <p>22 Q Can you give me an example of the rules,</p>
<p style="text-align: right;">210</p> <p>1 provided overall -- then it will go into a</p> <p>2 watchlist nomination process of does it meet the</p> <p>3 criteria for watchlist nomination.</p> <p>4 So, again, it is a -- may be a factor, but</p> <p>5 multiple pieces of information would need to be</p> <p>6 reviewed as well as meet the criteria for a</p> <p>7 watchlist nomination.</p> <p>8 BY MS. HOMER:</p> <p>9 Q If a passenger -- let me start over.</p> <p>10 Does -- is it Secure Flight that applies</p> <p>11 these rules to incoming itineraries in order to</p> <p>12 designate a passenger as potentially high-risk and</p> <p>13 subject to enhanced screening for that flight?</p> <p>14 MS. KONKOLY: Objection; vague. Objection</p> <p>15 insofar as the answer calls for information</p> <p>16 protected by SSI or law enforcement privilege.</p> <p>17 But you can answer, if you can.</p> <p>18 THE WITNESS: So depending, as there's</p> <p>19 multiple pieces of information that tie into the</p> <p>20 -- effectively, the rules, Secure Flight is the</p> <p>21 end engine that would be doing the matching to</p> <p>22 determine whether the passenger's been deemed</p>	<p style="text-align: right;">212</p> <p>1 or the sort of rules, that trigger enhanced</p> <p>2 screening?</p> <p>3 MS. KONKOLY: I'm going to object to that</p> <p>4 question on the basis of law enforcement</p> <p>5 privilege, SSI, potentially state secrets</p> <p>6 privilege, and instruct the Witness not to answer.</p> <p>7 BY MS. HOMER:</p> <p>8 Q Is the country that a flight is traveling</p> <p>9 to, if it's an international flight, one basis for</p> <p>10 a rule that would subject passengers on that</p> <p>11 flight to enhanced screening?</p> <p>12 MS. KONKOLY: Objection on the basis of</p> <p>13 SSI, law enforcement privilege, potentially state</p> <p>14 secrets.</p> <p>15 I'm going to instruct the Witness not to</p> <p>16 answer based on those privileges.</p> <p>17 Q If a passenger is selected for enhanced</p> <p>18 screening on the basis of the application of a</p> <p>19 rules-based list, are they subject to the same</p> <p>20 level of enhanced screening as an individual on</p> <p>21 the Selectee List?</p> <p>22 MS. KONKOLY: Objection; vague.</p>

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<p style="text-align: right;">213</p> <p>1 Objection; calls for speculation. Objection</p> <p>2 insofar as the answer implicates information</p> <p>3 protected by SSI or the law enforcement privilege.</p> <p>4 You can answer, if you can.</p> <p>5 THE WITNESS: So at a high level, are</p> <p>6 enhanced screening procedures at the checkpoint</p> <p>7 effectively the same as --</p> <p>8 BY MS. HOMER:</p> <p>9 Q Does the TSDB contain any information</p> <p>10 about whether or not the TSA has applied any</p> <p>11 rules-based list to passengers?</p> <p>12 MS. KONKOLY: Objection as to scope and</p> <p>13 insofar as that question implicates information</p> <p>14 outside of the purview of TSA, also insofar as it</p> <p>15 implicates information protected by state -- or --</p> <p>16 I'm sorry -- by law enforcement privilege or SSI.</p> <p>17 But you can answer, if you can.</p> <p>18 THE WITNESS: So does the TSC have</p> <p>19 awareness that TSA applies rules-based list to --</p> <p>20 list? Was that the question.</p> <p>21 Q Yeah.</p> <p>22 A Sorry.</p>	<p style="text-align: right;">215</p> <p>1 You can answer, to the extent that you</p> <p>2 can.</p> <p>3 THE WITNESS: So at a high level, we do</p> <p>4 not send -- because the TSC is about -- our</p> <p>5 notifications are primarily about those that we</p> <p>6 have matched on the watchlist, we do not</p> <p>7 automatically send our -- all -- any passenger</p> <p>8 that's been designated as high-risk or high -- for</p> <p>9 enhanced screening.</p> <p>10 BY MS. HOMER:</p> <p>11 Q Is the operation of the TSA's rules-based</p> <p>12 list entirely a TSA internal process?</p> <p>13 MS. KONKOLY: Objection; vague. Objection</p> <p>14 insofar as it might implicate information within</p> <p>15 the purview of other agencies, and as to the scope</p> <p>16 of the approved topics of this deposition.</p> <p>17 Further objection insofar as the answer implicates</p> <p>18 information protected by SSI or the law</p> <p>19 enforcement privilege.</p> <p>20 But you can answer, if you can.</p> <p>21 THE WITNESS: So, no, not necessarily.</p> <p>22 Q What other federal agencies are involved</p>
<p style="text-align: right;">214</p> <p>1 MS. KONKOLY: Same objections.</p> <p>2 THE WITNESS: Okay.</p> <p>3 MS. KONKOLY: Go ahead.</p> <p>4 THE WITNESS: So just making sure I</p> <p>5 understood the question.</p> <p>6 So generally speaking, insofar as TSA has</p> <p>7 stated that this is our procedure for identifying</p> <p>8 passengers for a high-risk standard screening or a</p> <p>9 low-risk, the TSC would know that we do have these</p> <p>10 procedures in place.</p> <p>11 BY MS. HOMER:</p> <p>12 Q Would the TSC know for any individual</p> <p>13 passenger whether that passenger had been flagged</p> <p>14 for enhanced screening by operation of a TSA</p> <p>15 rules-based list?</p> <p>16 MS. KONKOLY: Objection; vague. Objection</p> <p>17 as to scope, and so far as this answer calls for</p> <p>18 information within the purview of the TSC as</p> <p>19 opposed to TSA.</p> <p>20 Further object insofar as the answer would</p> <p>21 implicate information protected by SSI or the law</p> <p>22 enforcement privilege.</p>	<p style="text-align: right;">216</p> <p>1 in the creation of rules-based lists?</p> <p>2 MS. KONKOLY: Objection as to scope.</p> <p>3 Objection insofar as the information -- or the</p> <p>4 answer calls for information protected by SSI or</p> <p>5 the law enforcement privilege.</p> <p>6 You can answer, if you can.</p> <p>7 THE WITNESS: So from the construct, for</p> <p>8 example, of international, we may also collaborate</p> <p>9 with CBP related to the identification of</p> <p>10 high-risk passengers.</p> <p>11 BY MS. HOMER:</p> <p>12 Q Is being a traveling companion of someone</p> <p>13 listed on the Selectee List a basis for being</p> <p>14 subject to enhanced screening?</p> <p>15 MS. KONKOLY: Objection. That question</p> <p>16 has information protected by SSI as well as the</p> <p>17 law enforcement privilege.</p> <p>18 I'm going to instruct the Witness not to</p> <p>19 answer.</p> <p>20 Q How is the fact that someone has been</p> <p>21 designated for enhanced screening indicated on</p> <p>22 that person's boarding pass?</p>

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<p style="text-align: right;">217</p> <p>1 MS. KONKOLY: Objection insofar as that</p> <p>2 question calls for information protected by SSI or</p> <p>3 law enforcement privilege.</p> <p>4 But you can answer, if you can.</p> <p>5 THE WITNESS: TSA instructs the airlines</p> <p>6 to print an indicator for enhanced screening on</p> <p>7 the boarding pass.</p> <p>8 BY MS. HOMER:</p> <p>9 Q Is that indicator typically S-S-S-S?</p> <p>10 A Yes.</p> <p>11 Q What does SSSS stand for?</p> <p>12 MS. KONKOLY: Objection insofar as that</p> <p>13 question calls for information protected by law</p> <p>14 enforcement privilege or SSI.</p> <p>15 But you can answer, if you can.</p> <p>16 THE WITNESS: I don't know what -- if each</p> <p>17 S stands for something. At a high level, it is a</p> <p>18 designation used to designate enhanced screening.</p> <p>19 Q I have seen SSSS expanded as an acronym to</p> <p>20 Secondary Security Screening Selection. Is that a</p> <p>21 phrase that the TSA uses?</p> <p>22 MS. KONKOLY: Objection; vague.</p>	<p style="text-align: right;">219</p> <p>1 insofar as the answer calls for information</p> <p>2 protected by SSI or the law enforcement privilege.</p> <p>3 But you can answer, to the extent that you</p> <p>4 can.</p> <p>5 THE WITNESS: If they've identified a</p> <p>6 passenger that's been designated for enhanced</p> <p>7 screening, they will enact and conduct their</p> <p>8 enhanced screening procedures.</p> <p>9 BY MS. HOMER:</p> <p>10 Q Do TSA employees know that SSSS could mean</p> <p>11 that an individual is on a federal terrorist</p> <p>12 watchlist?</p> <p>13 MS. KONKOLY: Objection; vague, calls for</p> <p>14 speculation.</p> <p>15 THE WITNESS: So at a high level, they do</p> <p>16 know that there's multiple reasons why an</p> <p>17 individual may be designated for enhanced</p> <p>18 screening, and one of those may be that they have</p> <p>19 matched.</p> <p>20 Q Are TSA employees instructed to treat all</p> <p>21 individuals with SSSS on their boarding pass as a</p> <p>22 known or suspected terrorist?</p>
<p style="text-align: right;">218</p> <p>1 THE WITNESS: Yeah. I have not heard it</p> <p>2 written out that way all the time. I'd have to go</p> <p>3 back to confirm if that's actually what the four</p> <p>4 Ss stand for.</p> <p>5 BY MS. HOMER:</p> <p>6 Q Okay.</p> <p>7 Does the TSA ever use the phrase Quad-S as</p> <p>8 a further shortening of SSSS?</p> <p>9 A Yes.</p> <p>10 Q Does the TSA use any other phrase to</p> <p>11 indicate that a passenger has been selected for</p> <p>12 enhanced screening?</p> <p>13 MS. KONKOLY: Objection; vague.</p> <p>14 THE WITNESS: If -- we pretty much say</p> <p>15 enhanced screening.</p> <p>16 Q Okay. Is SSSS synonymous with enhanced</p> <p>17 screening?</p> <p>18 A It's synonymous with designation for</p> <p>19 enhanced screening.</p> <p>20 Q How are TSA employees instructed to handle</p> <p>21 boarding passes with the abbreviation SSSS?</p> <p>22 MS. KONKOLY: Objection; vague. Objection</p>	<p style="text-align: right;">220</p> <p>1 MS. KONKOLY: Objection; vague.</p> <p>2 Objection; misleading. Objection as to scope.</p> <p>3 Also, insofar as an answer would implicate any</p> <p>4 information protected by SSI or the law</p> <p>5 enforcement privilege.</p> <p>6 But you can answer, to the extent you can.</p> <p>7 THE WITNESS: No. They're instructed to</p> <p>8 conduct enhanced screening, not to -- to your</p> <p>9 question -- treat them as a known or suspected</p> <p>10 terrorist.</p> <p>11 BY MS. HOMER:</p> <p>12 Q Does the TSA apply any subdivisions within</p> <p>13 the enhanced screening category?</p> <p>14 MS. KONKOLY: Objection; vague. Objection</p> <p>15 insofar as the question calls for any information</p> <p>16 protected by SSI or the law enforcement privilege.</p> <p>17 You can answer, to the extent that you</p> <p>18 can.</p> <p>19 THE WITNESS: So insofar as conducting</p> <p>20 enhanced screening, passengers are designated for</p> <p>21 enhance screening with no subdivisions.</p> <p>22 When they're going through the screening</p>

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<p style="text-align: right;">221</p> <p>1 checkpoint, there's multiple reasons why they 2 might have been designated for enhanced screening 3 and the officers are instructed to carry out the 4 enhanced screening procedures. 5 BY MS. HOMER: 6 Q Does the TSA apply any subdivisions 7 between passengers designated for enhanced 8 screening once those passengers have exited the 9 screening area and are in the sterile area? 10 MS. KONKOLY: I'm going to object to that 11 question as calling for information protected by 12 SSI and the law enforcement privilege and instruct 13 the witness not to answer. 14 Q Would you agree that all individuals 15 designated for enhanced screening receive the same 16 operational response at checkpoints when they pass 17 through them? 18 MS. KONKOLY: Objection; vague. Objection 19 insofar as the question calls for information 20 protected by law enforcement privilege or SSI. 21 You can answer, to the extent that you 22 can.</p>	<p style="text-align: right;">223</p> <p>1 protected by law enforcement privilege or SSI. 2 You can answer, if you can. 3 THE WITNESS: My answer would be the same 4 of "can," is TSA has security procedures for 5 enhanced screening for its passengers, so to the 6 extent that there's a -- your question is "can." 7 TSA applies its procedures for those passengers 8 designated with enhanced screening on a boarding 9 pass. 10 BY MS. HOMER: 11 Q Is a person on -- let me back up. 12 Does the TSA add any annotations to the 13 TSDB information it has in Secure Flight to 14 indicate that that person is on the Enhanced 15 Selectee List? 16 MS. KONKOLY: Objection; vague. 17 Objection; I think that might have been asked and 18 answered this morning. Objection insofar as the 19 question calls for information protected by SSI or 20 the law enforcement privilege. 21 You can answer, to the extent that you 22 can.</p>
<p style="text-align: right;">222</p> <p>1 THE WITNESS: So the enhanced screening 2 procedures that are applied when passengers have 3 been designated for enhanced screening are the 4 same. 5 BY MS. HOMER: 6 Q If an infant is designated for enhanced 7 screening, are the procedures applied to that 8 infant the same as any other passenger? 9 MS. KONKOLY: Objection; vague. 10 Objection; calls for speculation. Objection 11 insofar as the question implicates information 12 protected by the law enforcement privilege or SSI. 13 You can answer, to the extent that you 14 can. 15 THE WITNESS: So without going into SSI, 16 TSA has enhanced screening procedures to be 17 conducted for all passengers that have been 18 designated for enhanced screening. 19 Q Can an infant under the age of three 20 receive enhanced screening by the TSA? 21 MS. KONKOLY: Objection; vague. Objection 22 insofar as the question calls for information</p>	<p style="text-align: right;">224</p> <p>1 THE WITNESS: So -- sorry -- can you 2 repeat the question of -- I'm just trying to -- 3 clarity of annotation where? Sorry. 4 BY MS. HOMER: 5 Q In Secure Flight. 6 A In Secure Flight? 7 Q Yeah. 8 A So to the extent that we receive 9 information as part of our export of the TSDB, 10 with the designations of the No-Fly the Selectee 11 and the Expanded Selectee, Secure Flight would 12 have that information when it's doing its 13 watchlist matching. 14 So to the extent that whether somebody is 15 going in after the fact and annotating, it's not 16 so much an after-the-fact. It's part of the 17 Secure Flight system in the information when it's 18 doing its matching. 19 Q Is Expanded Selectee a designation that 20 the TSA receives from the TSC? 21 MS. KONKOLY: Objection insofar as that 22 question calls for any information protected by</p>

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<p style="text-align: right;">273</p> <p>1 MS. KONKOLY: Objection; vague. Objection</p> <p>2 insofar as that calls for anything protected by</p> <p>3 SSI or the law enforcement privilege.</p> <p>4 But you can answer, to the extent that you</p> <p>5 can.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MS. HOMER:</p> <p>8 Q A private airline employee who checks in a</p> <p>9 passenger who is on the TSDB is able to see the</p> <p>10 SSSS designation on a boarding pass; correct?</p> <p>11 A Yes.</p> <p>12 Q But that SSSS designation does not</p> <p>13 necessarily mean that the individual is on the</p> <p>14 TSDB?</p> <p>15 A That is correct.</p> <p>16 Q Okay.</p> <p>17 Has the TSA ever subjected a child under</p> <p>18 the age of five to enhanced screening?</p> <p>19 MS. KONKOLY: Objection insofar as that</p> <p>20 calls for information protected by SSI or the law</p> <p>21 enforcement privilege.</p> <p>22 You can answer, to the extent that you</p>	<p style="text-align: right;">275</p> <p>1 information? I don't know. I would -- well, to</p> <p>2 the extent of which one, I don't know.</p> <p>3 BY MS. HOMER:</p> <p>4 Q Would improper disclosure of TSDB</p> <p>5 information be a basis for a TSA employee to be</p> <p>6 disciplined?</p> <p>7 MS. KONKOLY: Objection; vague.</p> <p>8 THE WITNESS: Generally speaking, yes.</p> <p>9 Q Has any TSA employee ever been disciplined</p> <p>10 for improperly screening a TSDB listee?</p> <p>11 MS. KONKOLY: Objection as to scope.</p> <p>12 Objection; vague.</p> <p>13 THE WITNESS: I know that TSA has</p> <p>14 disciplinary procedures for the full -- not</p> <p>15 carrying out screening procedures, but I don't</p> <p>16 know that I can answer specific for Selectees.</p> <p>17 Q Does the TSA track the number of times</p> <p>18 that TSA employees failed to screen a TSDB listee</p> <p>19 at the appropriate level of screening for that</p> <p>20 listee?</p> <p>21 MS. KONKOLY: Objection; vague. Objection</p> <p>22 as to scope. Objection insofar as it calls for</p>
<p style="text-align: right;">274</p> <p>1 can.</p> <p>2 THE WITNESS: So I would refer to the</p> <p>3 prior testimony to the extent of any passenger</p> <p>4 that's designated for enhanced security screening,</p> <p>5 TSA will conduct its enhanced screening procedures</p> <p>6 overall, like, protocols.</p> <p>7 BY MS. HOMER:</p> <p>8 Q And there are passengers under the age of</p> <p>9 five who have been designated for advanced --</p> <p>10 enhanced security screenings?</p> <p>11 MS. KONKOLY: Objection; mischaracterizes</p> <p>12 prior testimony. Objection; calls for information</p> <p>13 protected by SSI, the law enforcement privilege.</p> <p>14 Also, asked and answered.</p> <p>15 I will instruct the Witness not to answer</p> <p>16 that one.</p> <p>17 THE WITNESS: Okay.</p> <p>18 Q Has any TSA employee ever been disciplined</p> <p>19 for improper disclosure of TSDB information?</p> <p>20 MS. KONKOLY: Objection; vague.</p> <p>21 THE WITNESS: I don't know. I don't</p> <p>22 believe so. Improper disclosure of TSDB</p>	<p style="text-align: right;">276</p> <p>1 anything protected by SSI or the law enforcement</p> <p>2 privilege.</p> <p>3 But you can answer, to the extent that you</p> <p>4 can.</p> <p>5 THE WITNESS: So at a high level, we do</p> <p>6 have that -- we do record if there are cases where</p> <p>7 individuals may have been improperly screened.</p> <p>8 BY MS. HOMER:</p> <p>9 Q Has a travel companion of someone</p> <p>10 subjected to enhanced screening ever been</p> <p>11 themselves subjected to enhanced screening?</p> <p>12 MS. KONKOLY: Objection. That calls for</p> <p>13 information protected by SSI and the law</p> <p>14 enforcement privilege.</p> <p>15 I will instruct the Witness not to answer.</p> <p>16 Q Has the TSA ever revoked an airline</p> <p>17 employee's access to the TSDB based on their</p> <p>18 improper disclosure of TSDB information?</p> <p>19 MS. KONKOLY: Objection; scope.</p> <p>20 Objection; vague.</p> <p>21 THE WITNESS: Not that I'm aware of.</p> <p>22 Q Has --</p>

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1 CERTIFICATE OF SHORTHAND REPORTER

2 NOTARY PUBLIC

3 I, TASIANA T. BASDEKIS, Registered
4 Professional Reporter and Notary Public, the
5 officer before whom the foregoing deposition was
6 taken, do hereby certify that the foregoing
7 transcript is a true and correct record of the
8 testimony given; that said testimony was taken by
9 me stenographically and thereafter reduced to
10 typewriting under my supervision; that reading and
11 signing was requested; and that I am neither
12 counsel for or related to, nor employed by any of
13 the parties to this case and have no interest,
14 financial or otherwise, in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my notarial seal this 27 day of
17 March, 2018.

18 My commission expires September 30, 2021.

19 



20 _____
21 NOTARY PUBLIC IN AND FOR

22 THE COMMONWEALTH OF VIRGINIA

Exhibit E



Deposition of:
Zuhair El-Shwehdi

November 29, 2017

In the Matter of:
Elhady vs. Kable

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Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 Alexandria Division
4
5

6 ANAS ELHADY, et al,

7 Plaintiffs, Civil Action No.

8 vs. 1:16-cv-375

9 CHARLES H. KABLE, et al, (AJT)(JFA)

10 Defendants.

11
12
13 Deposition of Zuhair El-Shwehdi

14 Washington, D.C.

15 Wednesday, November 29, 2017

16 10:00 a.m.

17 Reported by: Laurie Donovan, RPR, CRR, CSR
18
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22
23
24
25

Elhady vs. Kable

<p style="text-align: right;">Page 86</p> <p>1 MR. ABBAS: What's the Bates 2 number? I'm not sure what page you're 3 looking at either. 4 BY MS. POWELL: 5 Q Well, I want to attempt to identify the 6 whole exhibit which seems to reflect an itinerary 7 from Benghazi back to the United States. 8 Is that correct? 9 MR. ABBAS: She's asking you what 10 is this document? What is this? 11 THE WITNESS: This is from Istanbul 12 to -- from Benghazi to Libya -- to, to 13 America. 14 BY MS. POWELL: 15 Q Yes. Okay. 16 A Yeah, I know. I remember. 17 Q On the second page of this, which is 18 Bates-stamped Shwehdi 15 at the bottom, there is a 19 flight, March 21st, from JFK to Columbus. 20 A Yes. 21 Q Is that the flight you took? 22 A No, because I think they, they put me in 23 another flight, because it was delayed, I think, 24 in this one. 25 Q So that's not reflected in your</p>	<p style="text-align: right;">Page 88</p> <p>1 actually -- 2 A I mean when I wrote "Dayton," sorry. It 3 should be Columbus, because I drove, I drove 4 from -- they drove me from Dayton to Columbus. 5 Q So your interrogatory response on page 6 88, number 6, should probably read "JFK to 7 Columbus"; is that correct? 8 A Yes, yes, exactly. Maybe I made a 9 mistake on that one, all right, because I use it 10 from Columbus. 11 Q Were you traveling alone on this flight? 12 A Yes. 13 Q Your interrogatory responses say it was 14 a substantially similar experience as that on your 15 April 3 travel. 16 Is that correct? 17 A Exactly. This is domestic still, yes, 18 yes, the same thing. 19 Q And does anything stand out about that 20 trip to you as different? Do you remember 21 anything happening differently on that flight? 22 A No. The same thing, the same treatment, 23 search me, SSS, and they put my hand up, search 24 me. The same procedure what I told you before. 25 Q Did you take any photo or video?</p>
<p style="text-align: right;">Page 87</p> <p>1 interrogatory responses. 2 A Where is that? 3 Q I'm on page 88. 4 A Okay. Page 88. 5 Q It's possible -- oh, wait. Yes, you did 6 miss your flight on this one. Sorry. 7 A Yeah, I know. 8 Q You're correct. Your responses reflect 9 that you did miss the planned flight. 10 Do you have any information or documents 11 about the flight you actually took? 12 A I am really -- this one, I couldn't find 13 it, because they took me, the Turkish Airlines, 14 and they give me a voucher for a hotel, and I 15 think American Airlines, they give me another 16 ticket for second date. 17 Q So your interrogatory responses reflect 18 a flight from JFK to Dayton. Your originally 19 planned itinerary was into Columbus. Do you know 20 which -- 21 A Yep, this one, because if I want to go 22 to JFK, if I want to use Dayton airport, I have to 23 go to LaGuardia, something called LaGuardia, but 24 Columbus goes directly to -- 25 Q So do you recall which one you</p>	<p style="text-align: right;">Page 89</p> <p>1 A No. 2 Q Did you write it down anywhere that we 3 haven't talked about? 4 A No. 5 Q Other than your resentment of the 6 treatment and the time it took, were there any 7 other consequences to the screening experience on 8 this trip? 9 A The humiliation and that stuff I told 10 you before. Maybe I need to repeat it, but I mean 11 this is what happened to me. 12 Q Now, why might you choose on one 13 occasion to fly out of Columbus versus Dayton? Is 14 one more convenient for you? 15 A If you go -- you see, it depends on the 16 flight. If you go to like Washington, D.C., 17 Dayton, they have frequent. I think of that 18 because we have the base, the Patterson base, so 19 they have more commuting with Washington, I think, 20 but if you want to go to JFK, you cannot fly there 21 from Dayton. You have to go to Cincinnati or to 22 Columbus, and I don't need to be go to LaGuardia 23 and then take a bus and walk with my situation, so 24 I rather go to the car, go to Columbus, and then 25 all the way to JFK.</p>

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<p style="text-align: right;">Page 90</p> <p>1 Q Let's go to the next flight. It is 2 listed on page 88 of Exhibit B as May 6, 2013 -- 3 A Okay. 4 Q -- from Columbus to JFK; is that 5 correct? 6 A Yes. 7 MS. POWELL: Let's mark the next 8 exhibit, please. 9 (Exhibit K was marked for 10 identification.) 11 THE WITNESS: May 6. Yes, okay. 12 BY MS. POWELL: 13 Q Do you see Exhibit K? 14 A Yes. 15 Q Does this look familiar to you? 16 A Yes. 17 Q Is this the flight reflected in your 18 interrogatory response? 19 A Yes. 20 Q And this is the flight you took? 21 A Yes. 22 Q So you did not miss this flight? 23 A No. From Columbus to -- I told you, all 24 my flights out of the United States, the domestic, 25 I didn't miss.</p>	<p style="text-align: right;">Page 92</p> <p>1 think. He went with me and he stand about a 2 couple of feet away. 3 Q How do you know he was a security 4 officer? 5 A Because -- well, I don't know. 6 Q Was he wearing a uniform? 7 A No, no, no. 8 Q Was he carrying a gun? 9 A No, no. He's civilian. 10 Q So he's just dressed like -- 11 A With a clipboard with some paper, and he 12 didn't talk to me, really. He was very nice with 13 me, but he watching me, I notice. 14 Q When did you notice him? 15 A From when I come to the counter. 16 Q Why did you notice him then? 17 A What? 18 Q Why did you notice him then? 19 A Because when I went, I go like from -- 20 because I stayed about one hour, maybe, to clear 21 me to go overseas in the Turkish counter. I saw 22 him behind me, and then when I start walking 23 toward the gate with security, they start search 24 me to go to the -- 25 Q So you had noticed him already at that</p>
<p style="text-align: right;">Page 91</p> <p>1 Q Was anyone traveling with you? 2 A By myself. 3 Q Did you see anybody you knew at the 4 airport? 5 A No. 6 Q Your interrogatory response says it was 7 a substantially similar experience to the April 3, 8 2011 flight with one addition, someone following 9 you. 10 A Yeah, this is the one -- 11 Q This is what you were talking about 12 before? 13 A -- what we talk about. This is when I 14 arrive to the airport, JFK. Somebody -- I know he 15 is African-American. I remember him. He start. 16 Where I go, he like my shadow, really. I was 17 really afraid. 18 Q Did you speak to him? 19 A No. 20 Q Did he speak to you? 21 A No. Finally, when I enter the airplane, 22 I told him "thank you, have a nice day," because I 23 noticed. I went -- because I have a gastric band 24 for losing weight, I cannot eat too much directly. 25 I have to do liquid, so I went to take a soup, I</p>	<p style="text-align: right;">Page 93</p> <p>1 point. Were you keeping an eye on him? 2 A Of course, because you couldn't miss it, 3 and, and by the way, when I went in there, he 4 mark, and I saw him, when I finally to enter the 5 Turkish airline, and I told him "have a nice day." 6 He went out and I went in. This is why I notice. 7 This is my -- 8 Q So when you went through security, you 9 got pulled aside again, right? 10 A Of course. 11 Q Where was he? 12 A On the other side. 13 Q So he went through security? 14 A Somewhere. I don't know. 15 Q So you weren't watching him to see 16 how -- 17 A What? 18 Q You weren't -- you don't know how he -- 19 A I don't know. I saw him in front of me 20 after I finish the security. I start putting my 21 belt again and my shoes. I saw him stand over 22 there, the same guy that stand outside near the 23 counter, near the ticket counter. 24 Q Did he get on your flight? 25 A No. I told you after I came and I sit</p>

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<p style="text-align: right;">Page 94</p> <p>1 down and I am waiting about two hours for the 2 flight to go to overseas, he stand somewhere, and 3 then after I went to the door, I told him "have a 4 nice day," he smiled, and I went inside the 5 airplane. I never saw him again. 6 Q Otherwise you said this was a 7 substantially similar experience, correct? 8 A Yes. 9 Q Anything else stand out as different? 10 A No. 11 Q Did you take any photos or video? 12 A No. 13 Q Did you write about it anywhere? 14 A No, except what I wrote to this, this 15 deposition. 16 Q Got it. 17 Did you otherwise make any complaint 18 about the person following you at the airport? 19 A Really I am afraid. 20 Q What are you afraid of? 21 A Because I told you, our background, any 22 authorities. I said maybe next time you're not 23 going to do it for me, and I don't know. Maybe 24 they sent somebody else. I don't know. Maybe. I 25 don't know. Maybe other flight, but this is the</p>	<p style="text-align: right;">Page 96</p> <p>1 you just tell me in this flight. 2 Q Let's talk about the next trip. It 3 is -- 4 A How many trips? 5 Q You took a lot, it turns out. On page 6 88 of Exhibit B, there is a flight listed 7 November 23, 2013, from JFK to Columbus. 8 A Coming back. Okay. 9 Q So this is your connecting flight coming 10 back, right? 11 A Yes. 12 Q And there was no reason for you to be at 13 JFK other than the connecting flight? 14 A The same thing, the same treatment, the 15 same . . . 16 MS. POWELL: Let's mark the next 17 exhibit, Exhibit L. 18 (Exhibit L was marked for 19 identification.) 20 BY MS. POWELL: 21 Q Does this look familiar to you? 22 A November 23. Yeah, this is my last time 23 I enter United States. I, I remember. 24 Q So what is Exhibit L? 25 A This is traveling from Benghazi to</p>
<p style="text-align: right;">Page 95</p> <p>1 only flight I noticed somebody escort me. Really. 2 This is the truth. I'm not -- 3 Q But you don't know whether he was a 4 government official? 5 A I don't know. I never asked him, but 6 wherever I go -- even I told you I went to the 7 bathroom, he stand outside the bathroom. When I 8 start walking, he follow me. 9 Q Got it, and this flight, like the 10 previous, were there any consequences other than 11 your resentment about your treatment and the time 12 it took to get through security? 13 A The humiliation. This is the -- if they 14 do it to one of you guys, you would feel it 15 forever. You singled out. The other people, 16 even, even if they -- sometime they told me it's 17 randomly, but they didn't treat me -- just one 18 second and they let them go. 19 Q But someone following you, that has not 20 happened again? 21 A I'm not sure. 22 Q As far as you know? 23 A This is what I wrote, I think. I don't 24 know if I wrote another thing, but this is my 25 notes, I think, in the previous flight, but now</p>	<p style="text-align: right;">Page 97</p> <p>1 Istanbul, Istanbul to JFK. 2 Q And this is your itinerary? If you flip 3 to the third page of the exhibit, which is Shwehdi 4 24, there appears to be a ticket stub. 5 Is that your ticket stub from this 6 flight? 7 A Yeah, because my name, Zuhair, they 8 didn't spell it good. They spell it Z-U-H-A-I. 9 There is no R. 10 Q And then the next two pages after that, 11 Shwehdi 25 and 26, appear to be just a slightly 12 different copy of the same itinerary? 13 A Which one? 14 Q Shwehdi 25 and 26. Just at the end 15 there. 16 A What do you mean? 17 Q This appears to be the same itinerary, 18 correct? 19 A Yes. It's the same one. Maybe they 20 give me two copies. I don't know. 21 Q Looking at just the domestic flight from 22 JFK to Columbus, Saturday, November 23, 2013 -- 23 A Yes. I missed that flight. 24 Q You missed this flight? 25 A I think, yes.</p>

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<p style="text-align: right;">Page 98</p> <p>1 Q I thought you did not.</p> <p>2 A Yes, because this one, they single me</p> <p>3 out from the -- I remember. They came to my seat,</p> <p>4 ma'am.</p> <p>5 Q Now, did you --</p> <p>6 A I don't know if I have the other ticket</p> <p>7 or not. I don't know. I don't have the domestic,</p> <p>8 because, because they give me the, they give me</p> <p>9 the --</p> <p>10 Q I don't have any documents about your</p> <p>11 flight, the flight you actually took back.</p> <p>12 A From JFK to Columbus, I think. I don't</p> <p>13 have -- I tried to find it, but --</p> <p>14 MR. ABBAS: Just make sure and let</p> <p>15 her finish the question.</p> <p>16 THE WITNESS: Okay. Sorry.</p> <p>17 MS. POWELL: That's okay.</p> <p>18 BY MS. POWELL:</p> <p>19 Q But speaking about the flight you</p> <p>20 actually took, was it on the 23rd, as planned?</p> <p>21 A Which one? This is the -- it start the</p> <p>22 22nd, okay?</p> <p>23 Q Right, but we're talking about the</p> <p>24 domestic leg of the flight. Your interrogatories</p> <p>25 say you traveled on November 23, 2013, as planned.</p>	<p style="text-align: right;">Page 100</p> <p>1 the hotel.</p> <p>2 Q I understand.</p> <p>3 So your interrogatory response about</p> <p>4 this flight on page 88 of Exhibit B just says you</p> <p>5 had a substantially similar experience as that</p> <p>6 described in your April 3rd flight.</p> <p>7 Is that accurate?</p> <p>8 A Yes.</p> <p>9 Q And you had a similar experience at</p> <p>10 check-in and security?</p> <p>11 A Domestic, the same thing.</p> <p>12 Q Does anything stand out about this</p> <p>13 flight?</p> <p>14 A No. The same, the same treatment as</p> <p>15 before.</p> <p>16 Q Were you traveling with anyone you know?</p> <p>17 A No.</p> <p>18 Q Did you see anyone you know at the</p> <p>19 airport?</p> <p>20 A No.</p> <p>21 Q Are there -- were there any consequences</p> <p>22 other than what we have already talked about?</p> <p>23 A The same, the similar situation,</p> <p>24 humiliation, the same thing, the same, the same</p> <p>25 situation I just wrote.</p>
<p style="text-align: right;">Page 99</p> <p>1 It's not clear to me if that's the case.</p> <p>2 Do you remember?</p> <p>3 A Because I slept one night, 22nd, is it?</p> <p>4 From Friday, from, from Benghazi to Istanbul,</p> <p>5 okay, and then I slept, I went to the hotel.</p> <p>6 Second day it will be the 23rd.</p> <p>7 Q Yes, I understand, so that was the</p> <p>8 planned flight. Is the flight you actually took</p> <p>9 also on the 23rd?</p> <p>10 A Yes, but -- no, no, no. I think this</p> <p>11 one you are right. It would be 24.</p> <p>12 Q So that's not reflected in your</p> <p>13 interrogatory responses?</p> <p>14 A Yeah, I think it will be 24. I think</p> <p>15 because I -- they put me in a hotel.</p> <p>16 Q Do you recall whether you had to pay for</p> <p>17 a new flight?</p> <p>18 A No, no. The Turkish airline, they</p> <p>19 issuing me a voucher, the same thing, and I went</p> <p>20 to the hotel.</p> <p>21 Q Did you pay for the hotel?</p> <p>22 A No, because they sent the luggage all</p> <p>23 the way to Columbus. They have an agreement or</p> <p>24 something like that. If your luggage all the way</p> <p>25 to Columbus, they have to give you a voucher for</p>	<p style="text-align: right;">Page 101</p> <p>1 Q Okay. Did you write about this</p> <p>2 experience anywhere?</p> <p>3 A Excuse me?</p> <p>4 Q Did you write about --</p> <p>5 A No, no. Whatever I wrote here, this is</p> <p>6 my writing.</p> <p>7 Q Okay.</p> <p>8 A Maybe I do a book later on.</p> <p>9 Q So the next flight that's listed is</p> <p>10 actually a 2012 flight. We have your flight in</p> <p>11 2012 to Santa Ana and back, California.</p> <p>12 A Yes.</p> <p>13 Q Was this for your daughter's --</p> <p>14 A No. This is for my brother's son's</p> <p>15 wedding.</p> <p>16 Q Okay.</p> <p>17 A And my daughter last year, '16.</p> <p>18 Q Got it.</p> <p>19 Okay. So the March 21, 2012, there are</p> <p>20 two flights listed in your interrogatory</p> <p>21 responses, from Dayton to Chicago and from Chicago</p> <p>22 to Santa Ana; is that correct?</p> <p>23 A Yes.</p> <p>24 Q And is that a flight you actually took?</p> <p>25 A Yes.</p>

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<p style="text-align: right;">Page 154</p> <p>1 And I have Mohammed. He is American, but he teach 2 in Saudi Arabia. And Sadek executed in '84. We 3 are seven. 4 Q And your parents are both passed away? 5 A My father passed away in '81. I 6 couldn't go back home because of my situation. 7 And my mother, she passed away after the 8 revolution on March 13, I think. I tried to reach 9 to see her, but I couldn't, so this is God 10 willing. 11 Q Do you have any children in Libya? 12 A No way, no way. I married in Cairo. I 13 couldn't go back, ma'am, because if I go back, I 14 be killed by Gaddafi's junta. 15 Q Okay. So the trip abroad to Doha and to 16 Libya, I take it, beginning April 3, 2011, did you 17 travel with anyone on that trip? 18 A By myself. 19 Q Okay. I'm trying to make sure we have 20 covered the usual questions about screening. 21 On your flight there, did you take any 22 photo or video? 23 A Nothing. 24 Q Did you write down your experience 25 anywhere we have not talked about?</p>	<p style="text-align: right;">Page 156</p> <p>1 A No, no. There is another trip. I don't 2 know it's this one. You can find the stamp. I 3 went from, from, from Libya to Tunisia, because we 4 went to the -- you see, Libya like this. We are 5 on this side. This is the military. Tripoli 6 here, Benghazi here. We cannot go here, because 7 this is Gaddafi. So from Benghazi liberated, we 8 go by airplane to Tunisia, and we help -- we can, 9 we can stay there, okay? 10 Q So hang on just a second. On this early 11 April 2011 -- 12 A I didn't go anywhere. 13 Q Okay. You don't go anywhere on that 14 trip. Let's wait then. 15 A Okay, okay. 16 Q Let's talk about the return trip. 17 A Which one? 18 Q That would be May 7, 2011. It is on 19 page 85 of the interrogatories. That's Exhibit B. 20 A May 7, Doha to -- yeah. 21 Q Your interrogatory responses say that 22 there was a flight from Doha to Dulles on Qatar 23 Airways QR51; is that correct? 24 A Yes. 25 Q Unlike the previous flights we've talked</p>
<p style="text-align: right;">Page 155</p> <p>1 A No. When I came back with the hassle 2 and the sit-down, I wrote this. You know, you 3 will find some mistake. I forgot something, 4 because I don't remember everything, some things. 5 Q You have testified that it took you a 6 long time to get through security and that you 7 were, you were humiliated by your travel 8 experience. I just mean that's what you've told 9 me. That's what you have told me. 10 Other than what we have already talked 11 about, are there any consequences from your 12 screening on this travel? 13 A No. The same thing. The same thing 14 like previous. 15 Q On this trip beginning April 3, 2011, 16 did you go to any countries other than Qatar or 17 Libya? 18 A No. This trip? No. 19 Q Did you travel into Libya more than 20 once? 21 A No. I went, I went from Qatar to Libya 22 and then from Libya I think to Qatar, Qatar back 23 here. 24 Q I wasn't sure if you went in and out 25 more than once.</p>	<p style="text-align: right;">Page 157</p> <p>1 about, your interrogatory responses here describe 2 a search by CBP, Customs & Border Protection; is 3 that correct? 4 A Yes. 5 Q Tell me about that search. 6 A When I come from overseas, this is what 7 they usually -- some of the flight, they come to 8 my seat. This one I don't think so. When I go 9 out from that airplane, I found the Custom or the 10 police, they waiting. They search everybody 11 coming out, the passport and the boarding pass or 12 the custom, what we fill in the, in the sky. 13 There is a form they give us in the 14 airplane. You have to fill it out, and when they 15 start everybody, when they saw my name, they said 16 that's it. They escort me, three or two, 17 sometimes four, okay? And I go with them and we 18 go the same way, okay, until we go to the lobby. 19 There is thousands of people there coming to the 20 United States. They took me aside and they got 21 one of the control rooms. They scan my 22 passport -- 23 Q Just a moment. This time you're in a 24 private room, right? You're not out in front of 25 the bigger group?</p>

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<p style="text-align: right;">Page 178</p> <p>1 to marry her, okay? So I couldn't come early. My</p> <p>2 wife and Nuria, they came before me. They came on</p> <p>3 that purpose, but my main purpose to do my tax for</p> <p>4 myself. And Nuria and my wife, they met that</p> <p>5 gentleman, but they didn't get locked or engaged.</p> <p>6 Q And you stayed in the US a little more</p> <p>7 than a month?</p> <p>8 A I think so. I'm not sure how many --</p> <p>9 the return --</p> <p>10 Q Okay. We'll talk about the return trip</p> <p>11 in a minute.</p> <p>12 A I went back May 6th.</p> <p>13 Q Okay. That sounds right to me.</p> <p>14 A Yep.</p> <p>15 Q So the March 20th trip --</p> <p>16 A March 20, 2013.</p> <p>17 Q -- you moved back to the US via Geneva</p> <p>18 and landed in Dulles?</p> <p>19 A Which one? JFK, March 20.</p> <p>20 Q You're right.</p> <p>21 A 2013.</p> <p>22 Q Yep, you're right.</p> <p>23 A JFK; yes?</p> <p>24 Q Yes. Yes, that's correct.</p> <p>25 Now, your interrogatory responses on</p>	<p style="text-align: right;">Page 180</p> <p>1 scan my passport and then to a private room and</p> <p>2 the same situation. They asked me about myself,</p> <p>3 my family back home and everything. That's it.</p> <p>4 Q Were any of the questions different this</p> <p>5 time?</p> <p>6 A No, no. The same thing. Everything. I</p> <p>7 don't know what -- this takes a long time. I</p> <p>8 missed the flight. I remember. This take me a</p> <p>9 long time, because I went to make ablutions, went</p> <p>10 to the bathroom, and it take me long time. Even I</p> <p>11 told them I need to call my wife, because they</p> <p>12 took my phone. I remember they took it to another</p> <p>13 terminal somewhere, so they allowed me to talk,</p> <p>14 because I already, I know the flight is missing.</p> <p>15 So I phone my wife. I told her I am in</p> <p>16 New York, I am safe, but I still inside</p> <p>17 Immigration. I cannot leave. I think I am going</p> <p>18 to miss the flight. When I go out, I'll give</p> <p>19 you the -- I thought I can catch another flight on</p> <p>20 the same night, but I couldn't. This is what</p> <p>21 happened.</p> <p>22 Q You stayed overnight in New York. Was</p> <p>23 it like before where they gave you a voucher?</p> <p>24 A When I finish, I went upstairs to the</p> <p>25 Turkish airline, and they told them -- they give</p>
<p style="text-align: right;">Page 179</p> <p>1 page 85 say that officers or agents entered the</p> <p>2 aircraft and escorted you to a room. This was --</p> <p>3 so the plane landed at Dulles, and then they came</p> <p>4 onto the plane?</p> <p>5 A No. JFK.</p> <p>6 Q Sorry. At JFK they came onto the plane?</p> <p>7 A Yeah, I remember. Maybe I didn't write</p> <p>8 it. I forgot.</p> <p>9 When the airplane taxiing and they start</p> <p>10 moving toward the gate, the captain, he said</p> <p>11 everybody put the boarding pass on the, on the, on</p> <p>12 the passport, and people, they stand up to take</p> <p>13 their luggage. He said please, everybody, be</p> <p>14 seated, so everybody sit back.</p> <p>15 And then the Turkish agency or something</p> <p>16 like that, Turkish airline ground from the station</p> <p>17 in New York with the, with the, with the</p> <p>18 authorities, they enter to the airplane and they</p> <p>19 took me. I stood up. I'm the only one on that</p> <p>20 airplane. I stood up. They told me follow us.</p> <p>21 Everybody sit down. Even the first class.</p> <p>22 Everybody. They took me. I am the first one, the</p> <p>23 ID.</p> <p>24 I went through, and then I went with</p> <p>25 them immediately, like what I told you before, to</p>	<p style="text-align: right;">Page 181</p> <p>1 me a voucher to the hotel, and I don't know the</p> <p>2 carrier. I forgot the carrier. Before I go, they</p> <p>3 give me -- they issue -- they told me we, we book</p> <p>4 you on the second flight, second day flight. So I</p> <p>5 don't know. Maybe morning, afternoon. I forgot.</p> <p>6 So I went to the hotel. I slept.</p> <p>7 Second morning I come back to the, to the airport,</p> <p>8 and it's a domestic flight like what I told you</p> <p>9 before.</p> <p>10 Q Now, for this one you said that it was a</p> <p>11 substantially similar experience to the previous</p> <p>12 returns but that the whole experience took five or</p> <p>13 six hours this time.</p> <p>14 A This one is more time.</p> <p>15 Q And I'm wondering which part of it took</p> <p>16 longer. Did they ask you more questions, or did</p> <p>17 you wait longer?</p> <p>18 A I wait longer, because they took my, I</p> <p>19 think my phone, and they couldn't do it in their</p> <p>20 terminal. This is what the gentleman told me. He</p> <p>21 said we want to take it to another place to check</p> <p>22 your phone.</p> <p>23 Q Who told you this?</p> <p>24 A One of the officer, the men who, who --</p> <p>25 they are surrounding me, because they didn't send</p>

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<p style="text-align: right;">Page 182</p> <p>1 me -- even if I go to the bathroom, they go with 2 me, and I still waiting until I saw somebody come 3 and they bring the phone. He said everything is 4 clear. They give me my passport and they open the 5 door, and I was outside with my luggage. 6 So the waiting is for that equipment, 7 not for the question and answer. The same period 8 of time, I think. 9 Q Did you get everything back? 10 (Discussion held off the record.) 11 BY MS. POWELL: 12 Q We're still talking about the trip on 13 March 20, 2013, where you landed at JFK. 14 A Okay. 15 Q After they searched your belongings and 16 took your phone and you waited, did you get 17 everything back? 18 A Yeah, yeah. No, nothing missing, yeah. 19 They gave me the phone, they gave me everything, 20 and they hand me my passport, and I went out. I 21 went to the hotel. They give me voucher for food. 22 This is the airline. 23 Q Were there any consequences of the 24 missed flights, missed -- 25 A My family, they are worried on me,</p>	<p style="text-align: right;">Page 184</p> <p>1 A Okay. 2 Q You list here a flight from JFK to 3 Istanbul. I take it from our previous 4 conversation that this was you returning to Libya. 5 A Yes. Not this. This is the tax, when I 6 finish the tax. When I came in March, this is 7 coming back to my family. 8 Q Yes. So you are returning -- 9 A After this, I didn't come and fill the 10 other flight until November something. 11 Q So let's talk about this May 6, 2013 12 flight. When you got back to Libya, were you 13 doing the same -- 14 A Same thing. I went to my family, 15 because we try to settle, I told you, but in that 16 year, the country or the city went downhill. They 17 start killing. 18 I told you they killed one of our 19 teachers. He's an American teacher. He is the 20 teacher of my -- because my daughter, they speak 21 English, and the local, the local school, they 22 didn't provide English, so I put them in -- they 23 call it International School. At International 24 School they bring teacher from America, from 25 Canada, from Australia, from Britain.</p>
<p style="text-align: right;">Page 183</p> <p>1 because my wife, when I talk to her, I told her 2 don't worry, I am safe, I am safe. You see, they 3 expecting this. This is what -- for the family, 4 this is -- what they call it in English? But for 5 myself, I'm used to it. This is my God willing. 6 So I stay. I never did anything wrong. So this 7 is -- maybe our friends, they never, they never 8 touch them in the airport, but they single me out. 9 No problem. I try to take my name off, and this 10 is one of the means, when I found those people. 11 Q I understand. 12 Okay. I think we are down to the last 13 international trip. That's a flight out and a 14 flight back. There's more questions after that, 15 but this is -- 16 A Okay. Take your time. I'm available. 17 Don't worry. 18 Q Just letting you know there's light up 19 ahead. 20 A Don't worry. I'm available. 21 Q Okay. Look at your interrogatory 22 response on page 84. 23 A 84, okay. 24 Q It is the May 6, 2013 flight, so that's 25 paragraph 4 on page 84.</p>	<p style="text-align: right;">Page 185</p> <p>1 So the environment, my kids, they are 2 American, they speak good, so I put them over 3 there, okay? And they make very, very contact 4 with this gentleman, the one who was killed, 5 because his wife, she is American, but she is 6 originally Lebanese. 7 My kids, they have a good relation with 8 those people, okay, and when they kill them and 9 the situation was bad, all my family, my relative, 10 they told me, Zuhair, your kids, they didn't raise 11 up here. We used to this system, but your kids, 12 they just came one year. We wish you to go back. 13 So I decide. I send them I think in 14 September, and I stayed until November, and then I 15 came back forever until now. I never went back. 16 Q But from May to November of 2013, you 17 were doing the same things you were doing -- 18 A The same thing, yeah, all my -- 19 Q Let me finish just so that it's clear on 20 the record. 21 A Sorry. 22 Q You were doing the same things to earn 23 income -- 24 A Yes. 25 Q -- that you were before?</p>

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<p style="text-align: right;">Page 186</p> <p>1 A Yes, yes.</p> <p>2 Q Were you doing anything else?</p> <p>3 A No.</p> <p>4 Q Let's talk about this trip out,</p> <p>5 specifically, the May 6, 2013 flight.</p> <p>6 A Mm-hmm.</p> <p>7 Q We have already talked about the</p> <p>8 connecting flight to JFK.</p> <p>9 A This is from Istanbul.</p> <p>10 Q Yes, from JFK to Istanbul. You said it</p> <p>11 was a substantially similar experience to the</p> <p>12 April 3, 2011 flight.</p> <p>13 So you checked in again at JFK?</p> <p>14 A Yes.</p> <p>15 Q And it took some amount of time for you</p> <p>16 to receive a boarding pass?</p> <p>17 A Yes.</p> <p>18 Q This answer here suggests it took longer</p> <p>19 this time; is that correct?</p> <p>20 A Yes.</p> <p>21 Q It also says you noticed an individual</p> <p>22 watching and following you.</p> <p>23 A Yes.</p> <p>24 Q When did you notice him?</p> <p>25 A On the counter.</p>	<p style="text-align: right;">Page 188</p> <p>1 said let's do it. I came to the lady. I told her</p> <p>2 I need your badge, the business card. She said</p> <p>3 this is my -- I am Supervisor Allen, so I wrote it</p> <p>4 down. This is my -- I was brave yesterday to do</p> <p>5 it.</p> <p>6 Q Just making sure I asked all of my</p> <p>7 questions here.</p> <p>8 Did your conversation with the Turkish</p> <p>9 airlines agent on that day go any different than</p> <p>10 the previous ones?</p> <p>11 A No.</p> <p>12 Q Did anyone tell you you were on a</p> <p>13 watchlist?</p> <p>14 A No, nobody, nobody.</p> <p>15 Q Was the screening experience itself any</p> <p>16 different?</p> <p>17 A The same like before.</p> <p>18 Q Were you also screened at the gate?</p> <p>19 A I don't recall on this one. I don't</p> <p>20 recall, but they screen me when I enter into the</p> <p>21 airport or something like that, but I don't</p> <p>22 recall.</p> <p>23 Q Okay. On this trip did you go to any</p> <p>24 countries other than Libya?</p> <p>25 A No. This one, no.</p>
<p style="text-align: right;">Page 187</p> <p>1 Q When you were checking in at the</p> <p>2 Turkish --</p> <p>3 A At Turkish counter.</p> <p>4 Q At the Turkish counter at JFK?</p> <p>5 A Yes.</p> <p>6 Q Was the person wearing a uniform?</p> <p>7 A No.</p> <p>8 Q How did you happen to notice him?</p> <p>9 A Because later on, when I go -- I told</p> <p>10 you about -- this is the same -- this is what I</p> <p>11 told you about.</p> <p>12 Q Well, this is a different time. We</p> <p>13 talked about this on a previous encounter.</p> <p>14 A Maybe not, but this one I know. It's</p> <p>15 the same. When I went out, I went to the gate, he</p> <p>16 follow me. I noticed that, but he never told me.</p> <p>17 Q Did you talk to him?</p> <p>18 A No.</p> <p>19 Q And did he talk to you?</p> <p>20 A No.</p> <p>21 Q Did you talk -- did you make a complaint</p> <p>22 about him following you or anything like that?</p> <p>23 A No. To whom? To whom? This is my</p> <p>24 first time, and I spoke to authorities yesterday.</p> <p>25 I have the carriage, because I'm coming to you. I</p>	<p style="text-align: right;">Page 189</p> <p>1 Q Did you enter and exit Libya more than</p> <p>2 once?</p> <p>3 A No, because after this, I told you we</p> <p>4 came back on the -- I came back on the following</p> <p>5 trip. I don't know which time.</p> <p>6 Q We have one return flight left. It</p> <p>7 appears on page 86 of your interrogatory</p> <p>8 responses.</p> <p>9 A Okay.</p> <p>10 Q Page 86, paragraph 4.</p> <p>11 A November 22.</p> <p>12 Q Yes, the flight on November 22 from</p> <p>13 Istanbul to JFK.</p> <p>14 A Okay.</p> <p>15 Q This is your return to the United States</p> <p>16 after you decided not to live in Libya, correct?</p> <p>17 A Yes. This is my last time I enter</p> <p>18 America.</p> <p>19 Q When you returned, did you have a job in</p> <p>20 the US?</p> <p>21 A No, because I work for Hope, but when I,</p> <p>22 I went to Libya, I don't have any job.</p> <p>23 Q When did you start working for Hope</p> <p>24 again?</p> <p>25 A After, after -- I think in December, the</p>

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<p style="text-align: right;">Page 190</p> <p>1 month of -- because I am -- everybody knows me, so 2 the board, they decide to -- they said, Zuhair, 3 you are the only one, because I am one of the 4 founders. Please take it, but I make, I make a 5 new request. I told them because of -- we need to 6 help, inside the United States, the widows and the 7 orphans, because we have some family. The 8 grandfather -- we establish the organization after 9 I came back from Libya to inside the United States 10 only. 11 Q So you no longer send funds overseas? 12 A No. 13 Q What kind of work do they do in the US? 14 A We have some widows, we have some sick 15 people, some orphans. 16 Q Charity for Libyans? 17 A Charity for Libyans, and we have two 18 occasions. Maybe you know the Ramadan when we 19 fast for a whole month, and the sacrifice. 20 Sacrifice is after Ramadan, when we sacrifice 21 lambs, and we distribute the money for the poor. 22 So on that occasion we have to give hope to the 23 unfortunate, the ones that didn't have money. 24 This is my job. 25 Q Okay. So for this last international</p>	<p style="text-align: right;">Page 192</p> <p>1 you a previous time? 2 A Because I recognize his face. He is 3 African-American. He told me I saw a thousand 4 faces every day, but when we went to the machine, 5 maybe when he log on or something, he start 6 laughing. He said you are right, I am the one 7 that took down your information, the same guy, 8 because it's in the same airport. 9 Q Did he ask you any different questions 10 this time? 11 A No. 12 Q Did anyone ask you anything different? 13 A No. They treat me good, really, but 14 the, the hassle -- everybody treat me good. This 15 is, this is -- I have to say it because I am a 16 Muslim and this is the truth. They treat me good, 17 but they put me aside until I miss my flight. My 18 family, they try to call me, and the phone is 19 closed. They are worried. This is the problem 20 only, but nobody treat me, not like back home. 21 They kill you and they put you on the street. 22 I have my cousin. By the way, two 23 months ago they killed him and they throw him in 24 the street. It's crazy over there, but in this 25 country we have --</p>
<p style="text-align: right;">Page 191</p> <p>1 flight, returning to the US, you again missed your 2 flight going -- 3 A Yes. 4 Q -- to Columbus and had to rebook. Did 5 you have to pay money for a new flight? 6 A No. The airline, they did everything 7 and they give me the hotel. The same thing. 8 Q So for this return to the US, were you 9 screened by CBP again? 10 A Yeah, the, the one that I don't know the 11 name, the CBP -- the one, yes, the same thing. 12 Q Did they enter the plane again or meet 13 you outside the plane? 14 A I don't recall on this one, but -- the 15 other one I remember, but this one, if they didn't 16 enter, they wait me on the front of the door. 17 Doesn't matter. Maybe three steps inside there. 18 Q But you're not sure? 19 A I don't think so. The front of the 20 door. And by the way, the same gentleman, I told 21 him I think one time -- he's African-American. He 22 said no, no, no. When we went back to the screen, 23 he start laughing. He told me you're right, I am 24 the one who do the same search previous. 25 Q It was the same agent who had searched</p>	<p style="text-align: right;">Page 193</p> <p>1 Q I would like to look at Exhibit A, which 2 is the amended complaint. 3 A This one? 4 Q Yes. 5 A Okay. What's this? 6 Q This is the amended complaint in this 7 action. We've already marked it, and if you'd 8 turn to the orange tab. 9 A Okay, orange tab, yes, page 69. 10 Q And turn to the next page. 11 A Okay. 12 Q Page 70. 13 A Okay. 14 Q So some of these paragraphs describe the 15 November 22nd experience. 16 A November 22, okay. 17 Q The November 22, 2013 experience which 18 we were just talking about. Paragraph 467 -- 19 A On November 22, okay. 20 Q It says the pilot announced over the 21 loudspeaker that all passengers should have their 22 passports and boarding passes ready for 23 inspection. 24 Is that different than -- 25 A This is, this is what I told you. This</p>

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<p style="text-align: right;">Page 194</p> <p>1 is the last flight, yeah. 2 Q Okay, but is that different than 3 previous flights? 4 A Yes. This is I think the first time I 5 listen to the pilot. He said I told you, 6 everybody sit down, and the ones they want to 7 grab -- they went back to their seats and 8 everybody sit, and they enter and they took me 9 from my seat. 10 Q So you described that about a previous 11 flight as well, I believe. 12 A Yes, two times, yes, yeah, the same 13 thing, the same thing happened at JFK. 14 Q Okay. 15 A This is what I wrote. This is exactly. 16 Q Paragraph 468 says "FBI and/or TSA 17 agents boarded the plane and inspected the 18 passengers' passports and boarding passes until 19 they located Mr. El-Shwehdi." 20 You have not previously talked about FBI 21 or TSA agents taking those sorts of activities. 22 Do you know what agency the agents were from? 23 A No, I don't know, but I wrote like this 24 because I don't know. Maybe FBI or TSA. This is 25 what I assuming, but I don't know anybody, but</p>	<p style="text-align: right;">Page 196</p> <p>1 was prolonged questioning. How long did it take? 2 A From airplane until, until down? 3 Q How long were you questioned? 4 A I don't know. The same, the same thing. 5 Maybe 30 minutes. The problem is for the waiting. 6 After they question me, nicely -- because I 7 remember everything, and I told them the same 8 story, and then they told me please go, and they 9 search my -- because they didn't search until I 10 present in front of them. They start searching my 11 belongings, and then after they return everything, 12 they close my luggage, and I go and sit down until 13 they come back to give me my passport. 14 Q All right. Other than a missed flight 15 on your return, were there any consequences for 16 your delay on this trip? 17 A It's my family and myself. This is what 18 I told you before. This is a hassle, but overall 19 they treat me good. The problem is why they 20 single me out. This is my, my, my suffering, and 21 my family -- most of it overseas, my suffering 22 from the flight, from the treatment, the way they 23 treat me. 24 Q So those are the specific flights and 25 trips you identified for us in your interrogatory</p>
<p style="text-align: right;">Page 195</p> <p>1 it's an agency from -- United States agency, the 2 border agency. I don't know who. 3 Q Did they identify themselves to you at 4 the time? 5 A No, no. 6 Q Did they show you any ID? 7 A No. 8 Q But they had badges? 9 A They had, they had the -- 10 Q But you don't remember what agency? 11 A No. 12 Q Paragraph 468 says you were "escorted 13 off the plane, detained, and subjected to 14 prolonged questioning and searches." 15 Is that correct? 16 A The same situation. They took me across 17 the -- they scan my passport and they took me to 18 the special room. 19 Q Did anything happen different this time? 20 A No. 21 Q When you say -- when the complaint says 22 it was "prolonged," how long did it take? 23 A What do you mean "prolonged"? What do 24 you mean? 25 Q That's what the complaint says, that it</p>	<p style="text-align: right;">Page 197</p> <p>1 responses, plus a few others we talked about, like 2 the one to England and two to Egypt and one to 3 Switzerland. 4 Are there any others that you recall? 5 A This is what I recall, ma'am, and this 6 is what I have. I have this document for myself, 7 I hand it to those people, and this is my 8 handwriting, I know, but maybe -- but what I 9 recall, I told you thoroughly. 10 Q Have you ever been denied entry to a 11 foreign country? 12 A No. 13 Q Have you ever been denied a visa that 14 you applied for? 15 A Because I'm American, they never. 16 Q Have you ever crossed the US border into 17 Canada? 18 A Yes. 19 Q When? 20 A When I was living in 990 Princewood. 21 Let me go back. 22 Before I went to, to my 52 South Glen 23 Oak, I moved, I moved in 2004, okay? Something 24 between 2001 and 2004. I don't recall the date. 25 Q So was there just one trip?</p>

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<p style="text-align: right;">Page 270</p> <p>1 (Signature having not been waived, 2 the deposition of ZUHAIR EL-SHWEHDI 3 was concluded at 5:08 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 272</p> <p>1 E R R A T A S H E E T 2 IN RE: ANAS ELHADY VS. CHARLES KABLE, ET AL 3 RETURN BY: 4 PAGE LINE CORRECTION AND REASON 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 (DATE) (SIGNATURE)</p>
<p style="text-align: right;">Page 271</p> <p>1 2 3 4 5 6 ACKNOWLEDGEMENT OF WITNESS 7 I, Zuhair El-Shwehdi, do hereby 8 acknowledge that I have read and examined the 9 foregoing testimony, and the same is a true, 10 correct and complete transcription of the 11 testimony given by me, and any corrections 12 appear on the attached Errata sheet signed by 13 me. 14 15 16 _____ 17 (DATE) (SIGNATURE) 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 273</p> <p>1 2 3 4 5 CERTIFICATE OF SHORTHAND REPORTER -- NOTARY PUBLIC 6 I, Laurie Donovan, Registered 7 Professional Reporter, Certified Realtime 8 Reporter, the officer before whom the 9 foregoing deposition was taken, do hereby 10 certify that the foregoing transcript is a 11 true and correct record of the testimony 12 given; that said testimony was taken by me 13 stenographically and thereafter reduced to 14 typewriting under my supervision; and that I 15 am neither counsel for, related to, nor 16 employed by any of the parties to this case 17 and have no interest, financial or otherwise, 18 in its outcome. 19 IN WITNESS WHEREOF, I have hereunto 20 set my hand and affixed my notarial seal this 21 8th day of December, 2017. 22 My commission expires: March 14th, 2021 23 24 25</p> <p>19  20 LAURIE DONOVAN 21 NOTARY PUBLIC IN AND FOR 22 THE DISTRICT OF COLUMBIA 23 24 25</p>

Exhibit F



Deposition of:
Mark Amri

March 8, 2018

In the Matter of:
Elhady vs. Kable

Veritext Legal Solutions

1075 Peachtree St. NE , Suite 3625

Atlanta, GA, 30309

800.808.4958 | calendar-atl@veritext.com | 770.343.9696

Elhady vs. Kable

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ANAS ELHADY, et al.

Plaintiff,

v.

Civil Action No.

1:16-cv-375

CHARLES H. KABLE, et al.

(AJT/JFA)

Defendant.

DEPOSITION OF MARK AMRI

DATE: Thursday, March 8, 2018

TIME: 10:23 a.m.

LOCATION: Department of Justice

20 Massachusetts Avenue NW

Washington, D.C. 20001

REPORTED BY: Natalia Thomas, Notary Public

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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 On behalf of Plaintiff:</p> <p>2 DENA M. ROTH</p> <p>3 United States Department of Justice</p> <p>4 20 Massachusetts Avenue, NW</p> <p>5 Washington, DC 20001</p> <p>6 dena.m.roth@usdoj.gov</p> <p>7 (202) 514-5108</p> <p>8</p> <p>9</p> <p>10 On behalf of Defendant:</p> <p>11 GADEIR I. ABBAS</p> <p>12 Council on American-Islamic Relations (CAIR)</p> <p>13 453 New Jersey Avenue, SE</p> <p>14 Washington, DC 20003</p> <p>15 gabbas@cair.com</p> <p>16 (202) 742-6420</p> <p>17</p> <p>18 Also present:</p> <p>19 Jayme Kantor, FBI</p> <p>20 Jennifer Greenband, TSA</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>1 WHEREUPON,</p> <p>2 MARK AMRI</p> <p>3 called as a witness, and having been sworn by the</p> <p>4 notary public, was examined and testified as follows:</p> <p>5 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>6 BY MS. ROTH:</p> <p>7 Q Good morning, Mr. Amri. My name is Dena</p> <p>8 Roth. I represent the defendants in this litigation.</p> <p>9 I have a few things I'd like to go over with you at</p> <p>10 the beginning of the deposition. So if you'll indulge</p> <p>11 me.</p> <p>12 One of the things I always say with everyone I am</p> <p>13 in a deposition with is that the most important thing</p> <p>14 that we can do today is make sure we're not</p> <p>15 interrupting each other because the court reporter is,</p> <p>16 of course, transcribing what we say. So what I'm</p> <p>17 going to ask is that you not interrupt me, let me</p> <p>18 finish my questions, and then you'll have an</p> <p>19 opportunity to respond. And I, of course, will do</p> <p>20 everything I can not to interrupt you.</p> <p>21</p> <p>22 A Sure.</p>																								
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">C O N T E N T S</p> <table border="0"> <tr> <td>EXAMINATION BY:</td> <td>PAGE</td> </tr> <tr> <td>By Ms. Roth</td> <td>4</td> </tr> <tr> <td>By Mr. Abbas</td> <td>140</td> </tr> </table> <p>5</p> <p style="text-align: center;">E X H I B I T S</p> <table border="0"> <tr> <td>No. DESCRIPTION</td> <td>PAGE</td> </tr> <tr> <td>Exhibit A Copy of complaint</td> <td>15</td> </tr> <tr> <td>Exhibit C Stipulation of Plaintiff Mark Amri</td> <td>37</td> </tr> <tr> <td>Exhibit E Boarding pass 08/04/16, 08/05/16</td> <td>57</td> </tr> <tr> <td>Exhibit H First Department of Homeland Security letter, 07/19/16</td> <td>54</td> </tr> <tr> <td>Exhibit M Department of Homeland Security document</td> <td>59</td> </tr> <tr> <td>Exhibit N Email to Maureen Dadaphoy</td> <td>60</td> </tr> <tr> <td>Exhibit O Second Department of Homeland Security letter, 09/01/16</td> <td>55</td> </tr> <tr> <td>(Exhibits attached to transcript.)</td> <td></td> </tr> </table> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	EXAMINATION BY:	PAGE	By Ms. Roth	4	By Mr. Abbas	140	No. DESCRIPTION	PAGE	Exhibit A Copy of complaint	15	Exhibit C Stipulation of Plaintiff Mark Amri	37	Exhibit E Boarding pass 08/04/16, 08/05/16	57	Exhibit H First Department of Homeland Security letter, 07/19/16	54	Exhibit M Department of Homeland Security document	59	Exhibit N Email to Maureen Dadaphoy	60	Exhibit O Second Department of Homeland Security letter, 09/01/16	55	(Exhibits attached to transcript.)		<p style="text-align: right;">Page 5</p> <p>1 Q Does that -- does that work for you? Great.</p> <p>2 Relatedly, because we're on the record, it's very</p> <p>3 important that your answers all be verbal. So, yes or</p> <p>4 no --</p> <p>5 A Yes.</p> <p>6 Q -- or anything else. So if you nod your</p> <p>7 head, I may ask, are you saying yes? Is that okay?</p> <p>8 A Yes, sure.</p> <p>9 Q Okay. Do you understand that you're under</p> <p>10 oath today just as if you were in a court room with a</p> <p>11 judge?</p> <p>12 A Yes.</p> <p>13 Q Okay. Have you ever been in a deposition</p> <p>14 before?</p> <p>15 A No.</p> <p>16 Q Okay. So I'll try to make this as painless</p> <p>17 as possible for you. Is there any reason today that</p> <p>18 you believe you're not able to testify honestly,</p> <p>19 completely, truthfully?</p> <p>20 A No.</p> <p>21 Q Okay. Have you taken any medication, in the</p> <p>22 last 24 hours, that could affect your memory or your</p>
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<p style="text-align: right;">Page 58</p> <p>1 Q You see that?</p> <p>2 A Yes.</p> <p>3 Q Okay. And then if you turn to the second</p> <p>4 page, this is the boarding pass from Ontario to San</p> <p>5 Francisco. And it looks like it's dated Thursday,</p> <p>6 August 4, 2016, right?</p> <p>7 A Okay.</p> <p>8 Q So does that refresh your memory as to --</p> <p>9 A Yeah. I mean, of course, it's a -- that's</p> <p>10 the boarding pass.</p> <p>11 Q Right. And it's marked with the four S's.</p> <p>12 A I had sent these pictures to my -- my --</p> <p>13 MR. ABBAS: Objection, I'm instructing the</p> <p>14 witness not to provide --</p> <p>15 THE WITNESS: Oh.</p> <p>16 MR. ABBAS: -- attorney/client privilege</p> <p>17 communication.</p> <p>18 BY MS. ROTH:</p> <p>19 A So I didn't have the access to them again.</p> <p>20 Q But they both -- they -- you see that they --</p> <p>21 is this the four S's you're referring to?</p> <p>22 A Yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 Q Okay. And the redress number at the top --</p> <p>2 A Yes.</p> <p>3 Q -- that -- is that the redress number you</p> <p>4 used --</p> <p>5 A Mm-hmm.</p> <p>6 Q -- and that you've been assigned? Okay.</p> <p>7 Turn to the next tab please, Tab N, as in Nancy.</p> <p>8 Introducing that as Exhibit N.</p> <p>9 *(Plaintiff's Exhibit N was marked for</p> <p>10 identification.)</p> <p>11 BY MS. ROTH:</p> <p>12 Q This is an email to someone named Maureen</p> <p>13 Dadaphoy (phonetic). I apologize if I'm</p> <p>14 mispronouncing that.</p> <p>15 A Hmm.</p> <p>16 Q Do you know who that person is?</p> <p>17 A She works for CAIR.</p> <p>18 Q Okay. And do you see that it's dated Friday</p> <p>19 March 4, 2016?</p> <p>20 A Mm-hmm.</p> <p>21 Q Have you seen this email before?</p> <p>22 A I -- I believe I did.</p>
<p style="text-align: right;">Page 59</p> <p>1 Q Okay. Could you turn to Tab M, as in</p> <p>2 Matthew, please? And I've introduced that as Exhibit</p> <p>3 M.</p> <p>4 *(Plaintiff's Exhibit M was marked for</p> <p>5 identification.)</p> <p>6 BY MS. ROTH:</p> <p>7 Q For the record, Mr. Amri, I'm just describing</p> <p>8 this is another document that has the Homeland</p> <p>9 Security symbol at the top. And below that, it says,</p> <p>10 print this page for your records. Do you recall this</p> <p>11 document?</p> <p>12 A I don't remember it, but I signed it, so --</p> <p>13 Q Is that -- so that's your signature at the</p> <p>14 bottom?</p> <p>15 A Yes.</p> <p>16 Q Okay. Do you see at the bottom, very bottom</p> <p>17 right hand of the page, there's a date, and it looks</p> <p>18 to me like it's March 4, 2016?</p> <p>19 A Mm-hmm.</p> <p>20 Q Is it possible that that's -- that that's the</p> <p>21 date you were printing this form?</p> <p>22 A Probably.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q Do you believe this is an email response you</p> <p>2 received in -- after you, whether through your agent</p> <p>3 or directly --</p> <p>4 A Yes.</p> <p>5 Q -- submitted your redress to DHS trip? Okay.</p> <p>6 And this, again, is dated March 4, 2016. Do you</p> <p>7 know -- can you recall, relative to March 4, 2016,</p> <p>8 when you submitted the form?</p> <p>9 A I don't know exactly.</p> <p>10 Q Is it possible that it was that day or the</p> <p>11 day before?</p> <p>12 MR. ABBAS: Objection, calls for speculation.</p> <p>13 BY MS. ROTH:</p> <p>14 Q If you remember?</p> <p>15 A I don't remember, honestly.</p> <p>16 Q The trip where you were denied boarding,</p> <p>17 where you've said that you were denied boarding, that</p> <p>18 was in January --</p> <p>19 A Mm-hmm.</p> <p>20 Q -- of 2016. So do you recall either way,</p> <p>21 between January, February and March, when you would</p> <p>22 have filed the DHS trip form?</p>

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<p>1 A I -- I know what happened after that, but I</p> <p>2 don't know exactly the date.</p> <p>3 Q Okay. But as of March 4th, you've received</p> <p>4 an email back, through your --</p> <p>5 A Mm-hmm.</p> <p>6 Q -- attorneys, that they have received --</p> <p>7 A Yes.</p> <p>8 Q Okay. Okay. I believe I asked you this</p> <p>9 earlier, and I honestly just don't remember the</p> <p>10 answer. Between August of 2016 and your trip to D.C.</p> <p>11 today, have you flown domestically?</p> <p>12 A No.</p> <p>13 Q Okay. So it's now March 2018. Can you</p> <p>14 please describe for me what happened on your travel to</p> <p>15 the -- to Washington, D.C.?</p> <p>16 A Okay.</p> <p>17 Q I believe that was two days ago; is that</p> <p>18 right?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 A I -- I went to American Airlines. First of</p> <p>22 all, the lady asked me to go to the computer -- the,</p>	<p>1 put my -- take my stuff. And he said, no. He's like,</p> <p>2 I need you to sit over here on the chair. I sat on</p> <p>3 the chair. I assumed, because this is the first time</p> <p>4 I -- like last flight, I didn't check any bags.</p> <p>5 So I'm like, I'm thinking they're probably</p> <p>6 checking my bag that I checked in. So it took about</p> <p>7 another 10 or 15 minutes until I got the okay to take</p> <p>8 my stuff. I heard them say, he's clear, you know.</p> <p>9 So I take my stuff and go, sit in front of the</p> <p>10 gate. Again, two TSA agents in front of the gate. At</p> <p>11 the time of the boarding pass, they were checking</p> <p>12 everybody for ID and all that. That went smooth.</p> <p>13 So I go into the flight. I don't have any</p> <p>14 handbags or anything with me, I just have my phone.</p> <p>15 Q You've checked a bag, right?</p> <p>16 A Yeah, I've checked a bag. Yes. I go to</p> <p>17 Dallas, we fly into Dallas. I go down from the</p> <p>18 flight, and I made a phone call to the business. And</p> <p>19 then I go use the bathroom.</p> <p>20 And then after that, I like have a couple of</p> <p>21 hours, so I said I'll -- I'll eat lunch. So I went to</p> <p>22 Pizza Hut. I ordered pizza with a Sprite. And I ate</p>
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<p>1 you know, self-check-in. So I put my ID. It didn't</p> <p>2 allow me to check in. She sent me to the counter. I</p> <p>3 go to the counter, and I gave her my ID.</p> <p>4 Same thing had happened. She has to call</p> <p>5 somebody. She can't get me a boarding pass. It took</p> <p>6 about 30 minutes or so to get a boarding pass. So I</p> <p>7 got boarding pass for both flights from Ontario to</p> <p>8 Dallas and Dallas to Washington, D.C.</p> <p>9 I go to the security check. The same thing</p> <p>10 happened again. I gave my ID and my boarding pass.</p> <p>11 The light turns red so the TSA agents asked me to --</p> <p>12 to stand on the side until he calls the supervisor.</p> <p>13 He calls the supervisor. The supervisor comes in,</p> <p>14 takes the boarding pass and my ID, and goes to the</p> <p>15 back, about ten minutes maybe. And then he comes</p> <p>16 back, and asked me to come in to go through screening.</p> <p>17 I go through the, of course, I took off</p> <p>18 everything. I go through the medical detector, and</p> <p>19 then I go to the screening machine, and then I got</p> <p>20 asked to go to the back to get patted and do that</p> <p>21 test, the chemical test, whatever that is.</p> <p>22 So I did all that. So I asked them, am I clear to</p>	<p>1 my food.</p> <p>2 And then I went to -- in front if the gate. It</p> <p>3 was Gate C-22. So I stood there -- I mean I was</p> <p>4 sitting there until about the boarding time. I've</p> <p>5 noticed six TSA agents with the machine that they test</p> <p>6 the -- the stuff, you know.</p> <p>7 So they were standing out there in front of the</p> <p>8 gate. So like well, I'm thinking, but I'm like, okay,</p> <p>9 maybe they're just going to check me and, you know, it</p> <p>10 should be okay.</p> <p>11 Two guys were checking IDs for everybody, one guy</p> <p>12 in front of the gate where the tunnel goes to the</p> <p>13 flight. So I gave my ticket. You know, the ticket</p> <p>14 beeps the first time and then I got -- I get the okay</p> <p>15 to go into the tunnel.</p> <p>16 Once I go into the tunnel, I see the three guys</p> <p>17 inside the tunnel, the TSA agents. They stopped me.</p> <p>18 Only me. And like, he's like, sir, we need to, you</p> <p>19 know, do a body-check and all that on you.</p> <p>20 I was like, why did you wait until, you know, I go</p> <p>21 inside the tunnel like that? Anyways, so I'm like,</p> <p>22 okay, no problem. They checked me, and everything is</p>

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<p style="text-align: right;">Page 66</p> <p>1 okay. And then they used the -- the chemical thing</p> <p>2 on. And they put it on the machine and that thing</p> <p>3 starts beeping red. It says, explosive detected.</p> <p>4 And I was like -- I was just -- I fell into shock.</p> <p>5 And I'm like, oh, my God, these guys are just, you</p> <p>6 know, trying to put something on me, trying to, you</p> <p>7 know, you know -- I don't know.</p> <p>8 I felt that was intentional, you know. The whole</p> <p>9 thing just meant -- it's like why are they waiting for</p> <p>10 me inside the tunnel? There's no cameras or nothing.</p> <p>11 And then this happens. I just got checked in Ontario.</p> <p>12 I mean, and I'm like, you know, I -- just all kind</p> <p>13 of stuff going through my mind, you know. You know,</p> <p>14 I -- I almost like -- I was really mad at the same</p> <p>15 time. I was like, what's going on? You know, they're</p> <p>16 just trying to make me look like a terrorist, or --</p> <p>17 or -- I mean, it just -- it looks like it was set up.</p> <p>18 Okay?</p> <p>19 So anyways, so they asked me like, we have to take</p> <p>20 you out to the TSA area. And they unchecked me from</p> <p>21 the flight, I go to their area, I got checked again.</p> <p>22 Okay? I got cleared.</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. ABBAS: Objection, I'm instructing --</p> <p>2 THE WITNESS: Yeah.</p> <p>3 MR. ABBAS: -- the witness no to provide any</p> <p>4 attorney/client privileged communications.</p> <p>5 BY MS. ROTH:</p> <p>6 A So I -- I walked down. And I think it was</p> <p>7 Gate C-8, there was a lady on the counter, and I asked</p> <p>8 her. I'm like, she gave me a boarding pass but it</p> <p>9 doesn't have a seat. So there was like two and a half</p> <p>10 hours to that flight. She said, it's not time yet,</p> <p>11 you know, come and see me an hour before. And then I</p> <p>12 go and sit down.</p> <p>13 Five minutes later, the same TSA agent comes back</p> <p>14 to me. He said, oh, we did the wrong procedure. I</p> <p>15 need you to come with me. And I looked at him like,</p> <p>16 what do you mean wrong procedure? And he said, I</p> <p>17 can't tell you, I'm just, you know. I'm like, okay.</p> <p>18 So all that, I'm just, you know, I didn't yell or</p> <p>19 nothing. I'm just -- I mean from inside, I'm like</p> <p>20 really pissed off. I don't know what to think. And</p> <p>21 I'm like, you know, so I went with him.</p> <p>22 He said, you have to wait, when we got the TSA</p>
<p style="text-align: right;">Page 67</p> <p>1 Q Okay. I'm sorry to interrupt you. When you</p> <p>2 said checked again, can you describe?</p> <p>3 A Yeah. I got patted and all that, and --</p> <p>4 and -- but they didn't do that test again, which I</p> <p>5 thought that was weird, you know. I was like, you</p> <p>6 know, I even asked them to do it.</p> <p>7 I'm like, please do that test. I'm like, I</p> <p>8 want -- I want to know why that -- why it beeped like</p> <p>9 that, you know. But it was -- I don't know. It</p> <p>10 seemed to me that it was done intentionally.</p> <p>11 So I go back to the flight and then, you know, I</p> <p>12 had just left, you know. It was -- it took about ten</p> <p>13 minutes, and came back, and then they told me, oh, the</p> <p>14 door is closed, we have to put you on another flight.</p> <p>15 I wasn't too happy about that, you know. She</p> <p>16 gives me a boarding pass that doesn't have a seat on</p> <p>17 it. And she's like -- I'm like, this doesn't have a</p> <p>18 seat or anything on it. She's just like, oh, you can</p> <p>19 get it in the other -- when they're boarding the --</p> <p>20 the other flight.</p> <p>21 So I'm not too happy about that. I called my</p> <p>22 lawyer.</p>	<p style="text-align: right;">Page 69</p> <p>1 area. He said -- he was talking to somebody all the</p> <p>2 time on the phone. And he said, you have to wait for</p> <p>3 somebody here.</p> <p>4 And you know, in my head, I'm like, you know,</p> <p>5 what's going on? You know, it's just -- I'm shocked.</p> <p>6 I'm still in state of shock. You know, I'm like,</p> <p>7 what's going on? Why am I being treated like this?</p> <p>8 You know, I wait another 15 minutes. And then a</p> <p>9 guy with a black shirt comes in, it says explosives</p> <p>10 expert on it. I'm like, you know -- he comes in, and</p> <p>11 he's asking them, what's going on here? He said, oh,</p> <p>12 we need to check this guy. And he's looking at me.</p> <p>13 He's like, there is no handbag, there's nothing,</p> <p>14 you know. He was like -- he's asking them, what am I</p> <p>15 going to check? You know, he was even making fun of</p> <p>16 it. He's like, what am I -- there's nothing to check</p> <p>17 here, you know.</p> <p>18 And -- and I'm like, please -- I was telling him.</p> <p>19 I was like, please, check it again. I want you to do</p> <p>20 that test again, because, you know, this is not fair</p> <p>21 what you guys are doing. I got delayed from my</p> <p>22 flight, got pulled over, I got humiliated in front of</p>

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<p style="text-align: right;">Page 70</p> <p>1 everybody, you know.</p> <p>2 Inside the tunnel, I'm sitting -- they're</p> <p>3 searching me, and everybody's passing by, and that</p> <p>4 thing beeped like that, you know. And even, you know,</p> <p>5 it's just like --</p> <p>6 Q Mm-hmm.</p> <p>7 A Even the TSA agent, like he was wondering.</p> <p>8 You know, he was nice but, you know, and he's like, I</p> <p>9 can feel that he's feeling with me, you know. So that</p> <p>10 guy, he's like, uh, uh, you're cleared. You know,</p> <p>11 there's -- there's nothing to do.</p> <p>12 So I go back to sit and wait. An hour before the</p> <p>13 flight, I go see that lady on the counter. And there</p> <p>14 was another -- a guy, a guy came and he actually</p> <p>15 started helping me out.</p> <p>16 I gave him my boarding pass, and I'm like, I need</p> <p>17 to get a seat, you know, in my boarding pass. And,</p> <p>18 you know, he couldn't do anything. He's like, I've</p> <p>19 never seen this. He'd been working there for ten</p> <p>20 years. Like, I've never seen this happen before.</p> <p>21 He said, have a seat, and I'll call you when we</p> <p>22 get -- when I get you a seat. It took about 45</p>	<p style="text-align: right;">Page 72</p> <p>1 whoever he was calling -- the -- he told me, okay, if</p> <p>2 I take you right now, I'll check you and all that, you</p> <p>3 just have -- I have to stay with you until you -- you</p> <p>4 board the flight.</p> <p>5 I'm like, no problem. You know, I just don't want</p> <p>6 to be humiliated like that in front of people. You</p> <p>7 know, that -- whatever happened to me. I'm like, and</p> <p>8 I'll do whatever you guys want.</p> <p>9 So I went with him. Okay. They put me in a room.</p> <p>10 Obviously, all that time, he's on the phone with</p> <p>11 somebody and telling him what to do, you know. And</p> <p>12 the guy, the TSA agent was super nice.</p> <p>13 All the time, he's like, I'm sorry. You know, I</p> <p>14 know this is not -- not right and all that. He's</p> <p>15 like, you know, he knew there was something going on.</p> <p>16 He was super nice about it.</p> <p>17 And then I -- they take me to a room, okay, I go</p> <p>18 inside the room, took off my jacket, took off my</p> <p>19 shoes, emptied all my pockets. I have bought like</p> <p>20 chocolate and Sprite in a bag, too, so I gave it to</p> <p>21 them.</p> <p>22 I got patted everywhere -- a little bit extra,</p>
<p style="text-align: right;">Page 71</p> <p>1 minutes to get me a seat. He was calling people, they</p> <p>2 put him on hold, and he's like, I can't get you</p> <p>3 cleared. And, you know, I finally got you cleared.</p> <p>4 And then I got a seat at the end of the plane,</p> <p>5 which I -- I actually paid for seats that are in the</p> <p>6 front. So I ended up getting a seat at the end of the</p> <p>7 plane.</p> <p>8 I got my boarding pass. Not even five minutes</p> <p>9 after that, okay -- it was about 15 minutes or ten</p> <p>10 minutes to go into the plane, start boarding -- and I</p> <p>11 see six TSA agents, with the guy wearing a suit, come</p> <p>12 in to the flight.</p> <p>13 They stand -- they stood in front of the gate.</p> <p>14 And I'm like, okay, here we go again. I'm like, I'm</p> <p>15 not going to miss this flight. So I go to them -- I</p> <p>16 go to that guy, you know, that actually came to me the</p> <p>17 first time.</p> <p>18 I'm like, if you guys need to check me, please go</p> <p>19 ahead and check me right now. I'll do whatever you</p> <p>20 guys want. I just want to get into the flight. I</p> <p>21 don't want no problems, okay?</p> <p>22 And he said, okay, but if -- he asked his boss or</p>	<p style="text-align: right;">Page 73</p> <p>1 just to say, and then they take my stuff. They want</p> <p>2 to get it screened. I go with them, and they started</p> <p>3 putting the -- those little strips on every piece of</p> <p>4 what I'm wearing.</p> <p>5 And this is the first time it happened to me. And</p> <p>6 they all came out green. So they put it on my shoes,</p> <p>7 my pants, my -- everything was okay, you know. And so</p> <p>8 I heard them say -- whoever he's talking to -- he was</p> <p>9 like, everything is good, everything is good.</p> <p>10 And the same guy, he's like, okay, you can just</p> <p>11 walk with me to the flight. And while he was walking,</p> <p>12 he's like, man, I'm really sorry, you know, I know --</p> <p>13 You know, I almost had tears in my eyes. He saw that.</p> <p>14 You know, I'm like, I'm U.S. citizen. I've never</p> <p>15 done anything wrong to -- to deserve this, you know,</p> <p>16 so -- and he just kept saying, oh, I'm sorry. You</p> <p>17 know, I just follow orders and stuff like that.</p> <p>18 And so he walks me through, and I was group 8,</p> <p>19 like one of the last guys to go in. And at that time,</p> <p>20 there was a lady with a suit, with another TSA agent</p> <p>21 standing there. Another, maybe five TSA agents,</p> <p>22 they're all looking at me while I'm going to the</p>

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<p style="text-align: right;">Page 74</p> <p>1 flight.</p> <p>2 I go inside the tunnel, and there's another two</p> <p>3 inside the -- the tunnel. And I -- I hear him, you</p> <p>4 know, once I passed by them, like they were saying,</p> <p>5 yup, he -- he, you know, like -- like I went through</p> <p>6 in front of them.</p> <p>7 And that's it. You know, it was just very</p> <p>8 humiliating. It was -- it was -- I don't know. I</p> <p>9 felt it was intentional. It was really bad</p> <p>10 experience, a very bad experience.</p> <p>11 I wasn't too happy about it. I don't, you know,</p> <p>12 it was -- all kind of thoughts was going through my</p> <p>13 head.</p> <p>14 Q What kind of thoughts?</p> <p>15 A I mean I -- I honestly think I was -- at the</p> <p>16 beginning when that happened, I was like I'm -- I'm</p> <p>17 being set up or something. You know, they're trying</p> <p>18 to make me look like a terrorist or something like</p> <p>19 that.</p> <p>20 And I'm like, I just went -- I went crazy when</p> <p>21 I -- when I saw that screen, I was like, you know.</p> <p>22 And, you know, what can I think, you know?</p>	<p style="text-align: right;">Page 76</p> <p>1 patient guy. I'm very, you know, you know, I don't</p> <p>2 get mad -- get mad that easy. I don't get emotional</p> <p>3 that easy. But it sucked. Honestly, it sucked. I</p> <p>4 don't -- I'm a man, you know. I don't tear up that</p> <p>5 easy, you know.</p> <p>6 And then I felt like, you know, why has this been</p> <p>7 happening to me? You know, I'm not a bad person, why</p> <p>8 is this happening to me? You know, I've just been</p> <p>9 having the worst -- last couple of years and, you</p> <p>10 know, and this is -- this was like worst by far.</p> <p>11 Q I just want to make sure I'm asking you the</p> <p>12 question as clearly as possible. I understand that</p> <p>13 you think that the TSA agents were there to check you,</p> <p>14 but did you see any other passengers also being</p> <p>15 checked?</p> <p>16 A No. No.</p> <p>17 Q So no one else was being swabbed?</p> <p>18 A No.</p> <p>19 Q Is it your understanding that the swab test</p> <p>20 that you had done in Dallas was the same one that had</p> <p>21 been done in Ontario?</p> <p>22 A Yes. Yes.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q When you described being in the tunnel, is</p> <p>2 that -- so that I make sure I understand -- is that</p> <p>3 like the jet bridge between the --</p> <p>4 A Yes.</p> <p>5 Q -- airport and the plane?</p> <p>6 A Yes. Which I thought was weird, you know.</p> <p>7 If you want to check me, why didn't you check me</p> <p>8 before I go in, in front of everybody, in front of the</p> <p>9 camera? Why would -- why are you waiting for me to go</p> <p>10 inside there and do all that to me?</p> <p>11 Q The first -- the first flight from Dallas to</p> <p>12 D.C., where you were checked in the jet bridge, were</p> <p>13 other passengers also being checked by the TSA in the</p> <p>14 jet bridge?</p> <p>15 A Nobody.</p> <p>16 Q Just you?</p> <p>17 A No -- nobody. It was meant for me. I mean</p> <p>18 it was obvious, you know. And -- and the way it was</p> <p>19 done, it was just -- it was so obvious. I mean it's</p> <p>20 just, you know, I don't know how to describe it, you</p> <p>21 know. I felt really bad.</p> <p>22 I honestly, for the first time -- I'm a very</p>	<p style="text-align: right;">Page 77</p> <p>1 Q Did anyone describe that test for you before</p> <p>2 it was done either time?</p> <p>3 A No. I mean they told me that I'm going to be</p> <p>4 checked and all that. But, you know, I mean even like</p> <p>5 the -- the explosive expert, when he saw the printout,</p> <p>6 I guess, of that machine, you know, he kind of smiled,</p> <p>7 laughed, you know. He's like, there's nothing I can</p> <p>8 do. And he's like, just let him go, you know.</p> <p>9 It's just -- it felt like even the TSA agents,</p> <p>10 it's like it felt like somebody is calling the shot</p> <p>11 from somewhere, and it was weird; it was weird for</p> <p>12 them. So, you know, and that's why.</p> <p>13 You know, it's -- it was -- I wasn't comfortable.</p> <p>14 And he, the guy that was walking with me, he was like,</p> <p>15 you know, it felt like he wasn't comfortable with it</p> <p>16 too, so --</p> <p>17 Q Can you describe a little bit more why you</p> <p>18 got that sense from the TSA agent, that he wasn't</p> <p>19 comfortable of what was going on?</p> <p>20 A I mean it just that it -- it felt that it's</p> <p>21 unfair. He told me that. So it -- it felt that, you</p> <p>22 know, it's like they don't usually do that to anybody.</p>

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<p style="text-align: right;">Page 78</p> <p>1 They pull people on the side with four S's and stuff</p> <p>2 like that, they check it, but not that way.</p> <p>3 Q The whole time this is happening in Dallas,</p> <p>4 have you, has your checked bags been wherever luggage</p> <p>5 is, or it's --</p> <p>6 A Yeah, they went -- it went -- it arrived</p> <p>7 earlier with the -- with the earlier flight.</p> <p>8 Q So your bag wasn't with you the whole time</p> <p>9 this was happening?</p> <p>10 A No.</p> <p>11 Q The -- if you recall it, and it was only two</p> <p>12 days ago. Relative to when you've landed in Dallas,</p> <p>13 when was the first flight to D.C. supposed to take</p> <p>14 off? When was that scheduled?</p> <p>15 A Three --</p> <p>16 Q How many hours?</p> <p>17 A 3:15. It was supposed to arrive here at</p> <p>18 7 p.m.</p> <p>19 Q And do you remember roughly what time you've</p> <p>20 landed in Ontario -- in Dallas?</p> <p>21 A In Dallas?</p> <p>22 Q Yeah.</p>	<p style="text-align: right;">Page 80</p> <p>1 If I didn't go, I probably had to miss my flight.</p> <p>2 So -- and I'm worried that this is going to happen to</p> <p>3 me again, when I go -- I'm going back through Dallas</p> <p>4 again, so --</p> <p>5 Q Have you ever had an experience in an airport</p> <p>6 before where you were swabbed and it came up positive</p> <p>7 for explosives?</p> <p>8 A No. No. Never.</p> <p>9 Q Did anyone explain to you --</p> <p>10 A I asked the guy if he -- I'm sorry -- you</p> <p>11 know, I asked the guy. I'm like, I mean what could it</p> <p>12 be, something like -- he's like, oh, it could be</p> <p>13 anything.</p> <p>14 And I'm like, you pulled me out of the flight and</p> <p>15 all that, and it's like it could be anything? It just</p> <p>16 didn't seem right to me. It just -- it was -- I don't</p> <p>17 know, it felt that it was intentional. I don't know.</p> <p>18 Q Can you think of any reason why you would</p> <p>19 have tested positive for that, based on anything</p> <p>20 you've been in contact with?</p> <p>21 A There's no way. No, of course. I mean, I go</p> <p>22 to construction, you know, tiles and stuff like that,</p>
<p style="text-align: right;">Page 79</p> <p>1 A It was two hours before that.</p> <p>2 Q So you landed around 1?</p> <p>3 A I know because I know we had, yeah, I know we</p> <p>4 had like about two hours. That's why I said I'll go</p> <p>5 have lunch and all that. And then, it was, yeah,</p> <p>6 about two hours.</p> <p>7 Q And the flight that you were rebooked on,</p> <p>8 that you ultimately flew on to get to D.C., what time</p> <p>9 did that depart?</p> <p>10 A Like 5:30? 5:30, 5:35.</p> <p>11 Q Was that on schedule?</p> <p>12 A Yeah.</p> <p>13 Q So it wasn't delayed in any way?</p> <p>14 A No.</p> <p>15 Q But it was about two -- two plus hours later?</p> <p>16 A Because -- because I went to them. At the</p> <p>17 end, I was like, I went to them because I felt that</p> <p>18 the same thing has happened, because I saw them take</p> <p>19 that machine inside the tunnel. And I'm like, I'm not</p> <p>20 going to let this happen again. I'm like, I'm going</p> <p>21 to go before, and just tell them, hey, take your time.</p> <p>22 Do whatever you want, you know.</p>	<p style="text-align: right;">Page 81</p> <p>1 but I don't -- there's no way anything near -- it was</p> <p>2 close, or anything like that. And then they, again,</p> <p>3 they checked everything, you know, everything, every</p> <p>4 piece I'm wearing. And everything came back green.</p> <p>5 So that's why I'm telling you, it -- it just didn't</p> <p>6 make sense.</p> <p>7 You know, I was even thinking, I was like, oh,</p> <p>8 maybe it's the pizza I ate? And I'm not kidding. I</p> <p>9 swear, I was thinking even about that. I'm like, how</p> <p>10 the pizza came out of the oven. Maybe something, you</p> <p>11 know, spilled on me.</p> <p>12 MR. ABBAS: Parmesan cheese.</p> <p>13 BY MS. ROTH:</p> <p>14 A I'm like, I'm not kidding, I was -- was</p> <p>15 thinking about that. I'm like, gosh, what could it</p> <p>16 be? I'm like, you know, it was -- it was horrible,</p> <p>17 you know.</p> <p>18 Q After you were in the jet bridge, and the</p> <p>19 test came back positive, was it your -- is it your</p> <p>20 understanding that everything that happened subsequent</p> <p>21 to that was because you tested positive?</p> <p>22 A I -- I -- I believe that it was done</p>

<p style="text-align: right;">Page 82</p> <p>1 intentionally to me. I don't know. I -- that's what</p> <p>2 I believe, and I still believe that whatever happened</p> <p>3 to me, the way it happened, okay, I think it was</p> <p>4 intentionally to me. I don't know why.</p> <p>5 But it's just the way -- they were waiting for me</p> <p>6 over there. They, you know, the way it was done, you</p> <p>7 know, the guy standing in front of the flight, the</p> <p>8 three guys inside, you know. It was just, you know,</p> <p>9 hey, this guy is coming, let's do this to him. I mean</p> <p>10 there's -- I -- I see no other reason.</p> <p>11 Q Did anyone from TSA say verbally or</p> <p>12 communicate, in any way to you, anything that would</p> <p>13 suggest that this was a deliberate attempt on their</p> <p>14 part?</p> <p>15 A No. But, at the same time, it's like they</p> <p>16 were taking instruction from somebody else at all</p> <p>17 time. You know, at all -- at all time, I can hear him</p> <p>18 talking on the, you know, that guy had a cellphone</p> <p>19 with him, and he was talking on it, and he had an ear</p> <p>20 thing, so -- which I thought that was weird, you know.</p> <p>21 If you already have the earplug and you're talking</p> <p>22 to boss, why are you talking on the cellphone with</p>	<p style="text-align: right;">Page 84</p> <p>1 BY MS. ROTH:</p> <p>2 Q Okay. Mr. Amri, and we're back from our</p> <p>3 break. Did you talk to anyone other than your</p> <p>4 attorney during your break?</p> <p>5 A No.</p> <p>6 Q I have a few more questions about what</p> <p>7 happened on Tuesday.</p> <p>8 A Sure.</p> <p>9 Q I understand that it was a very unpleasant</p> <p>10 experience for you, so please bear with me. And if</p> <p>11 you need break at any time, feel free to ask, okay?</p> <p>12 A Okay.</p> <p>13 Q You testified earlier that you were swabbed</p> <p>14 in Ontario, right, and negative? And --</p> <p>15 A Mm-hmm.</p> <p>16 Q And then you were swabbed again in Dallas.</p> <p>17 Between when you were swabbed in Ontario and when you</p> <p>18 were swabbed in Dallas the first time, can you</p> <p>19 describe what, if anything, you got -- you were in</p> <p>20 contact with? Like you touched or did you purchase</p> <p>21 anything that you recall?</p> <p>22 A I went into the bathroom. And then I went</p>
<p style="text-align: right;">Page 83</p> <p>1 somebody else? You know. And that's why I thought it</p> <p>2 was intentional.</p> <p>3 Q Is there anything else about the experience</p> <p>4 that you haven't described?</p> <p>5 A That's it. I mean it's like I said, you</p> <p>6 know, I wasn't -- I wasn't too happy about it. It's</p> <p>7 just that I was going through a lot of mixed emotions,</p> <p>8 and I don't want to go through that again. I honestly</p> <p>9 don't want to go through that again.</p> <p>10 Q Once you landed in D.C., did you have any</p> <p>11 problems exiting the plain?</p> <p>12 A No. No. Nobody talked to me. Nothing. You</p> <p>13 know, I went, I got -- rented a car, and went to the</p> <p>14 hotel. I was really tired. I got -- it got like</p> <p>15 really late, so -- it was really cold, and I got sick.</p> <p>16 Q I'm going to propose we take a break, go off</p> <p>17 the record for about ten minutes?</p> <p>18 MR. ABBAS: Up to you. I --</p> <p>19 MS. ROTH: Is it -- okay, let's do that.</p> <p>20 Let's go off the record please.</p> <p>21 (OFF THE RECORD)</p> <p>22 (ON THE RECORD)</p>	<p style="text-align: right;">Page 85</p> <p>1 and bought a pizza and, you know, ate it.</p> <p>2 Q Yup.</p> <p>3 A And I bought chocolates -- a bag of</p> <p>4 chocolate, a bag of Skittles, and a Sprite.</p> <p>5 Q And that was before -- that all happened</p> <p>6 before you got --</p> <p>7 A Yes.</p> <p>8 Q -- swabbed in Dallas, right?</p> <p>9 A Yes.</p> <p>10 Q And then after you were swabbed the first</p> <p>11 time in Dallas --</p> <p>12 A Mm-hmm.</p> <p>13 Q And then the explosive expert tested</p> <p>14 everything else? Did you wash your hands?</p> <p>15 A I didn't do nothing.</p> <p>16 Q Okay. So did you --</p> <p>17 A I haven't bought anything. I didn't go</p> <p>18 anywhere. Nothing.</p> <p>19 Q Okay. And you were -- were you swabbed again</p> <p>20 on the jet way when you board --</p> <p>21 A Before boarding. Everything, they took my</p> <p>22 shoes, my clothes, everything, they put a strip on it.</p>

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<p style="text-align: right;">Page 142</p> <p>1 to be the subject of additional proceedings. And so</p> <p>2 we would note that the preservation of all evidence</p> <p>3 regarding the incident in Dallas on March 6th, 2018 --</p> <p>4 MS. ROTH: Can you go off the record please?</p> <p>5 Please stop the record.</p> <p>6 MR. ABBAS: No. No. It takes two -- it</p> <p>7 takes two --</p> <p>8 MS. ROTH: Yup. Yup. This is -- none of</p> <p>9 this is proper.</p> <p>10 MR. ABBAS: It takes two to go off the</p> <p>11 record. It takes two to go off the record.</p> <p>12 MS. ROTH: This is in -- completely improper</p> <p>13 deposition.</p> <p>14 MR. ABBAS: All right. Well, I -- well, I'm</p> <p>15 done. I'm done. So we're issuing our preservation</p> <p>16 notice on the record.</p> <p>17 MS. ROTH: Nothing about this is going on the</p> <p>18 record. It's -- anything to do with the -- your</p> <p>19 so-called preservation notice in unrelated actions.</p> <p>20 So none of this is proper, on the record for this --</p> <p>21 MR. ABBAS: It's on the record. It's on the</p> <p>22 record already, and I'm -- I'm happy with the --</p>	<p style="text-align: right;">Page 144</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, NATALIA THOMAS, the officer before whom</p> <p>3 the foregoing proceeding was taken, do hereby certify</p> <p>4 that the proceedings were recorded by me and</p> <p>5 thereafter reduced to typewriting under my direction;</p> <p>6 that said proceedings are a true and accurate record</p> <p>7 to the best of my knowledge, skills, and ability; that</p> <p>8 I am neither counsel for, related to, nor employed by</p> <p>9 any of the parties to the action in which this was</p> <p>10 taken; and, further, that I am not a relative or</p> <p>11 employee of any counsel or attorney employed by the</p> <p>12 parties hereto, nor financially or otherwise</p> <p>13 interested in the outcome of this action.</p> <p>14</p> <p>15</p> <p>16 <i>Natalia Thomas</i></p> <p>17 NATALIA THOMAS</p> <p>18 Notary Public in and for the</p> <p>19 District of Columbia</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 143</p> <p>1 MS. ROTH: I will seek a motion to strike.</p> <p>2 You can now go off the record.</p> <p>3 MR. ABBAS: I agree. You should. Yeah, we</p> <p>4 can you off the record.</p> <p>5 (Whereupon, at 1:13 p.m., the deposition of</p> <p>6 MARK AMRI was concluded.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 145</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, CHRISTINE URREGO, do hereby certify that</p> <p>3 this transcript was prepared from audio to the best of</p> <p>4 my ability.</p> <p>5</p> <p>6 I am neither counsel for, related to, nor</p> <p>7 employed by any of the parties to this action, nor</p> <p>8 financially or otherwise interested in the outcome of</p> <p>9 this action.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

Exhibit G

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

ANAS ELHADY, *et al.*,

Plaintiffs,

V.

CHARLES H. KABLE, Director of the Terrorist Screening Center; in his official capacity, *et al.*;

Defendants.

Case No. 16-cv-00375
Hon. Anthony J. Trenga

**DEFENDANTS' REVISED RESPONSES TO PLAINTIFFS' SECOND SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS TO TSC AND FBI**

Pursuant to Federal Rule of Civil Procedure 26 and 33, Defendants Charles H. Kable, Director of the Terrorist Screening Center (“TSC”); Kelli Ann Burriesci, Principal Deputy Director of TSC; Timothy P. Groh, Deputy Director for Operations at TSC; and Christopher Wray, Director of the Federal Bureau of Investigation, hereby submit revised objections and responses to the discovery requests titled, “Plaintiffs’ First Requests for Production of Documents to Defendants Piehota, Mabeus, Grigg and Wray,” served October 6, 2017. Defendants Kable, Burriesci, and Groh are automatically substituted for the previous officeholders, pursuant to Rule 25(d). The Defendants’ responses are provided in accordance with Federal Rule 26(b)(1), which permits the discovery of any information, not privileged, that is both (1) relevant to any party’s claim or defense, and (2) proportional to the needs of the case. The Defendants do not, by providing such information, waive any objection to its admissibility on the grounds of relevance, proportionality, accessibility, materiality, or other appropriate ground. The inadvertent production by the Defendants of information or documents protected by any privilege or protection shall not

constitutional or common law privilege. Nothing contained in the following responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

Response: In light of the Court’s ruling of October 27, 2017 (Dkt. No. 61), Defendants clarify that they withdraw “and seeking irrelevant information” from the first sentence of the first paragraph above. Subject to and without waiving any of the remaining foregoing objections, TSC and FBI will search for and process any current policies and procedures regarding dissemination of TSDB information to banks and other financial institutions. Defendants do not currently believe that any responsive documents exist. To the extent any nonprivileged, non-SSI documents exist, they will be produced beginning November 15, 2017, and thereafter on a rolling basis. Consistent with Defendants’ proposal in the Discovery Plan, including limitations on identifying classified information, privilege logs will be provided as appropriate with the rolling production of documents.

RFP 4: All directives, written policies, protocols, practices, procedures, agreements, memorandums, memorandums of understanding, contracts, records, communications, written/computer generated embodiments, statistical information, and/or other documents that relate or refer to the dissemination of any information contained in the TSDB to airlines and airline personnel, whether to screen passengers or to screen airline personnel for employment at airports.

Objections: Defendants object to the request as overbroad and seeking irrelevant information. None of the Plaintiffs makes an allegation that they were denied employment at an airport, and

there is a separate procedural mechanism for individuals to challenge employment decisions. Even if the dissemination of TSDB information generally could be relevant, the request is overbroad, burdensome and disproportionate to the needs of the case because it appears to require a search for all documents “that relate” to the sharing of “any information” in the TSDB at every point since its creation. Defendants object to the terms “records,” “written computer generated embodiments,” “statistical information” and “dissemination” as vague. Moreover, read broadly, it is potentially extraordinarily burdensome. TSC does not export TSDB information directly to airlines as a general matter. Rather, TSC exports certain subsets of TSDB data to TSA for use in screening. To the extent the request seeks information about how TSA uses that data, the request is misdirected to TSC and FBI.

Defendants further object to any document request that seeks the disclosure of policies and procedures not currently in effect; the complaint seeks only injunctive relief and past policies and procedures are not relevant to determining whether the process currently available is adequate.

Defendants further object to this request to the extent that it defines the requested material to include all predecisional and deliberative material, which is not relevant to any claim or defense of any party, not relevant to the subject matter of the action, and not likely to lead to the discovery of admissible evidence and, as such, are overbroad and impose an undue burden and expense upon the Defendants. Defendants will neither search for nor produce documents reflecting draft or predecisional positions.

Defendants further object to this request to the extent it seeks information that is classified and/or may be subject to an assertion of the state secrets privilege or other appropriate statutory protection pertaining to such information. Defendants object to this request to the extent it seeks information subject to the law enforcement and investigatory files privilege, Sensitive Security

Information (including Sensitive Security Information that is not appropriate for disclosure under Section 525(d) of the Department of Homeland Security Appropriations Act of 2007, Public Law No. 109-295, 120 Stat. 1355, as reenacted), national security information, or information otherwise protected by the deliberative process privilege, the attorney-client privilege, the work product doctrine, the Privacy Act (5 U.S.C. § 552a), or any other appropriate statutory protection or constitutional or common law privilege. Nothing contained in the following responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

Response: In light of the Court’s ruling of October 27, 2017 (Dkt. No. 61), Defendants clarify that they withdraw “and seeking irrelevant information” from the first sentence of the first paragraph above, as well as the second sentence of the same paragraph. Based on the remaining foregoing objections, Defendants will not respond.

RFP 5: All directives, written policies, protocols, practices, procedures, agreements, memorandums, memorandums of understanding, contracts, records, communications, written/computer generated embodiments, statistical information, and/or other documents that relate or refer to the dissemination of any information contained in the TSDB to non-federal government agencies, including states, and all state and local law enforcement agencies.

Objections: Defendants object to the request as duplicative with RFP 4 to TSC, served September 26, 2017. Defendants object to the request as overbroad and seeking irrelevant information. Even if the dissemination of TSDB information generally could be relevant, the request is overbroad,

Objections: Defendants object to the extent that this request exceeds Defendants' obligations under the Federal Rules of Civil Procedure.

Response: Subject to and without waiving all of the foregoing objections, FBI and TSC will process unclassified, nonprivileged, non-SSI policies and procedures as described in response to Section B, items (1) and (2) of Defendants' Initial Disclosures. They will be produced beginning November 30, 2017, and thereafter on a rolling basis. Consistent with Defendants' proposal in the Discovery Plan, including limitations on identifying classified information, privilege logs will be provided as appropriate with the rolling production of documents.

Dated: December 22, 2017

Respectfully submitted,

DANA J. BOENTE
United States Attorney

CHAD READLER
Acting Asst. Attorney General, Civil Division

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

/s/ Amy E. Powell
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Attorneys for Defendants

Exhibit H

both (1) relevant to any party's claim or defense, and (2) proportional to the needs of the case. The Defendants do not, by providing such information, waive any objection to its admissibility on the grounds of relevance, proportionality, accessibility, materiality, or other appropriate ground. The inadvertent production by the Defendants of information or documents protected by any privilege or protection shall not constitute a waiver of the applicable privilege or protection as to any information or documents disclosed. The Defendants reserve the right to supplement or amend their responses should additional or different information become available.

OBJECTIONS AS TO DEFINITIONS AND INSTRUCTIONS

1. Defendants object to the Plaintiffs' Definition 8 (of "you" and "your" "Defendants" and "Defendant") to the extent that such definitions purport to apply to any of the Defendants individually. In responding to the Requests for Production, Defendants respond in each and every response on behalf of their respective agencies, based upon information in the agency's possession, custody, or control.

2. Defendants object to other definitions (including, but not limited to, Definitions 1, 4, 5, 10 and 11) because they define terms not actually used in this set of requests for production. Defendants reserve all objections to such definitions if they are used in future discovery requests.

3. Defendants object to Instructions 1 and 6 insofar as they apply to privileged communications between counsel, or between parties and their counsel, to the extent they conflict with the Parties' Joint Discovery Plan, as approved by the court, which specifically provides that: "If any discovery request is susceptible of a construction that calls for the production of such documents, those documents need not be produced or identified on any privilege log." They also conflict with the Federal Rules of Civil Procedure and ordinary practice by supposing that privilege

is waived if not asserted on such a log and by requiring identification of privileged documents beyond what is ordinarily required on a privilege log. With respect to each and every request, Defendants respond consistently with the Discovery Plan and the Federal Rules.

4. Defendants object to Instruction 2 and 4 to the extent they impose obligations in excess of those imposed by the Federal Rules, which do not require production of redacted documents for any and all requests and do not require a particular form of a privilege log. Privileged or protected information is not always readily segregable and the placement or number of redactions may themselves reveal privileged or protected information. The redaction process may also be burdensome and disproportionate to the needs of the case. As set forth in the discovery plan, Defendants reserve the right NOT to produce a specific privilege log when such a log would itself reveal privileged or protected information.

5. Defendants object to Instruction 5 to the extent it imposes obligations in excess of those imposed by the Federal Rules, which do not require identification of documents that no longer exist. Such an exercise is likely impossible, but in any event burdensome, disproportionate and not required by the Federal Rules. Defendants will comply with the Federal Rules.

OBJECTIONS

RFP 1: All documents or records relating to each and every domestic and/or international travel undertaken by all Plaintiffs for the last sixteen years, whether by air, land, or sea, including, but not limited to, boarding passes, or any documents containing information such as date(s) of travel, carrier name, point of origin and point of entry, and any documents that describe or refer to screening and/or inspection for all Plaintiffs.

Objections: Defendants object to the request as overbroad and seeking information not relevant to any claim or defense in this case and disproportionate to the needs of the case. The request on its face seeks any records remotely related to travel (e.g. - documents which only happen to contain a Plaintiff and a carrier name) and is not limited to documents that are specifically about Plaintiffs' travel experiences. Specifically, Defendants object to the phrase "relating to each and every domestic and/or international travel" as vague and confusing and likely overbroad, and to the phrase "describe or refer to screening and/or inspection" as vague and confusing. Searching for such documents would be burdensome or impossible, and under no circumstances will Defendants search for materials that only incidentally contain information related to Plaintiffs' travel. Additionally, the request is duplicative and improperly directed to all Defendant agencies.

Moreover, Plaintiffs' travel experiences are only relevant to the procedural due process claim insofar as they establish the deprivation of a liberty interest – i.e., how Plaintiffs' experiences were impacted. That information is uniquely within the custody and control of Plaintiffs. If there were travel records or screening measures of which Plaintiffs were unaware, it could have no impact on their liberty interests; accordingly, Plaintiffs improperly seek information about their own travel experiences from Defendants, when such information is more appropriately gleaned from their own records. Defendants previously requested that Plaintiffs provide documentation and details of their travel screening experiences, including dates, times, and departure and arrival information. After Plaintiffs propounded the instant discovery request, they stated the purpose was to assist them in compiling the information requested by Defendants (even though the response deadline has long since lapsed). Plaintiffs should not be able to use a request for production of documents directed to Defendants to belatedly satisfy their own discovery

obligations. Instead, Plaintiffs should use information uniquely within their knowledge to respond to Defendants' discovery requests.

Defendants further object to this request to the extent that it defines the requested material to include all predecisional and deliberative material, which is not relevant to any claim or defense of any party, and not relevant to the subject matter of the action. As such, the request is overbroad and imposes an undue burden and expense upon the Defendants. Defendants will neither search for nor produce documents reflecting draft or predecisional positions.

Defendants further object to this request because it seeks information that is classified and/or may be subject to an assertion of the state secrets privilege or other appropriate statutory protection pertaining to such information. Defendants object to this request as seeking information subject to the law enforcement and investigatory files privilege, and Sensitive Security Information ("SSI") (including SSI that is not appropriate for disclosure under Section 525(d) of the Department of Homeland Security Appropriations Act of 2007, Public Law No. 109-295, 120 Stat. 1355, as reenacted). Defendants further object to this request to the extent it seeks national security information, or information otherwise protected by the deliberative process privilege, the attorney-client privilege, the work product doctrine, the Privacy Act (5 U.S.C. § 552a), or any other appropriate statutory protection or constitutional or common law privilege. Nothing contained in the following responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

Each Defendant agency further objects as follows:

CBP: In addition to the foregoing objections, CBP further objects as follows: TECS is the principal law enforcement information collection, analysis and sharing environment used by officers at the border to facilitate the law enforcement and antiterrorism mission of CBP. It therefore contains information about the inbound and outbound travel of individuals to and from the United States, including the inspection of travelers seeking entry to the United States. Defendants object to the production of information from TECS that is law enforcement privileged, sensitive security information or otherwise protected by privilege or statute. Privileged or protected information that cannot be produced from such records includes, but is not limited to: any information that could reveal or indicate status in the TSDB, law enforcement handling codes, system codes, sensitive information reflecting the nature of law enforcement and/or intelligence interest in particular travelers, other information that would tend to reveal confidential law enforcement information, investigative methods or techniques, or sensitive security information, and private or personally identifiable information related to the identities of law enforcement officers, government officials or third parties.

CBP also receives Passenger Name Records (PNR) from commercial air carriers or their travel reservation systems which include data regarding persons travelling to and from the United States on commercial air carriers, to the extent collected by the carrier. CBP further objects to the production of PNR as overbroad, burdensome, irrelevant and disproportionate to the needs of the case since PNR is only incidentally related to Plaintiffs' travel and is unrelated to Plaintiffs' travel experiences. It is maintained in readily searchable form for only a limited period. CBP further objects to the production of PNR information that is law enforcement privileged, sensitive security information, confidential business information, or otherwise protected by privilege or statute,

including the Privacy Act, or by international agreements or obligations pertaining to the collection or retention of PNR.

CBP objects to the search of any other system maintained by CBP for responsive records. Information about the travel of particular individuals might in theory exist in records in other law enforcement or intelligence systems, or incidentally in emails or reports, but existence of such records is speculative, and searching for all such records would be unduly burdensome. The existence or nonexistence of particular such records is not relevant to the procedural due process claim before the Court, and falls within the category of information excluded by the Court in the order dated October 27, 2017. The existence or nonexistence of such documents may itself be protected by the law enforcement privilege and potentially the state secrets privilege. If such responsive documents existed, such documents would likely contain information protected by privilege or statute, including but not limited to SSI, law enforcement privilege, investigative methods and techniques, the state secrets privilege, the deliberative process privilege, and the attorney client privilege. Finally, CBP objects to any broader search for responsive material that might in theory incidentally exist in emails or other reports. Such a search would be burdensome and disproportionate to the needs of the case.

TSA: In addition to the foregoing objections, TSA further objects as follows: TSA's Secure Flight program matches identifying information of aviation passengers and certain non-travelers against the consolidated and integrated terrorist watch list maintained by the Federal Government. Under the Secure Flight program, TSA receives passenger and certain non-traveler information from aircraft and airport operators, including itinerary information. TSA uses this information to conduct watch list matching and then transmits boarding pass printing results back to aircraft and

airport operators. TSA retains Secure Flight records for 99 years for individuals who are a confirmed match to a government watch list, for 7 years for individuals who are a potential match to a government watch list, and for up to 7 days for individuals who are not a match to a government watch list. Accordingly, TSA will neither confirm nor deny the existence of records that would indicate the individual is a potential match or a confirmed match to a government watch list because the existence or nonexistence of such information is SSI and protected by the law enforcement privilege. In addition, to the extent the Secure Flight records include travel within seven days of the search, TSA cannot provide any Secure Flight records containing such information, as Secure Flight cannot be searched solely for records within that time frame and the search results would include any information retained for 7 years or 99 years.

Various offices within TSA may create and retain documents about the travel of particular individuals, which are derived from Secure Flight records, when necessary to carry out their mission. TSA objects to the search of such documents, which would reveal privileged and protected information, including TSDB status and/or the use or consideration of particular security measures. Accordingly, the existence or non-existence of such information is properly withheld on grounds of both relevance and privilege. Such information, if it exists, would be sensitive security information and may be protected by other privileges, including the law enforcement privilege and the state secrets privilege. If such responsive documents existed, such documents would likely contain information protected by privilege or statute, including but not limited to SSI, law enforcement privilege, deliberative process privilege, and the attorney client privilege. TSA further objects to the production of any private or personally identifiable information related to the identities of law enforcement officers or other government officials.

TSA objects to the search of any other system maintained by TSA for responsive records. There may in theory exist incident reports from airport security incidents or arrests, or emails among personnel that mention travel plans incidentally. TSA objects to the search for such documents as burdensome, irrelevant and disproportionate to the needs of the case. If such responsive documents existed, such documents would likely contain information protected by privilege or statute, including but not limited to SSI, law enforcement privilege, deliberative process privilege, and the attorney client privilege. TSA further objects to the production of private or personally identifiable information related to the identities of law enforcement officers or other government officials.

DHS TRIP: In addition to the foregoing objections, DHS TRIP further objects as follows: DHS TRIP ordinarily possesses travel information only insofar as it is submitted by the travelers seeking redress in their DHS TRIP inquiry, and travelers do not always submit such information. DHS TRIP objects to the search and production of this information, which is presumed to be already in Plaintiffs' possession and is not the most efficient way to retrieve travel information. If responsive documents existed only incidentally, DHS TRIP objects to the search for such documents as burdensome, irrelevant and disproportionate to the needs of the case. If such responsive documents existed, such documents would likely contain information protected by privilege or statute, including but not limited to SSI, law enforcement privilege, deliberative process privilege, and the attorney client privilege.

TSC: In addition to the foregoing objections, TSC further objects as follows: TSC maintains encounter records related to, *inter alia*, travelers who are a match or a near-match with the TSDB.

TSC objects to the search of these records because confirmation of the existence or nonexistence of records within a particular timeframe would potentially reveal TSDB status at that time, which is protected by statute and privilege, as described above. Moreover, neither current nor past status is relevant and necessary to the litigation of Plaintiffs' claims.

TSC may in theory possess other documents reflecting travel information of particular individuals, including underlying derogatory information (which has already been excluded from this case), emails or memoranda regarding particular encounters or nominations or reflecting particular security measures or other operational or intelligence information. The existence or nonexistence of such documents would also tend to confirm or deny TSDB status. TSC further objects to the search for such documents as burdensome, irrelevant and disproportionate to the needs of the case; such documents have already been properly excluded by the Court in the order dated October 27, 2017. If such responsive documents existed, such documents would likely contain information protected by privilege or statute, including but not limited to SSI, law enforcement privilege, the state secrets privilege, deliberative process privilege, and the attorney client privilege. Defendants further object to the production of private or personally identifiable information related to the identities of law enforcement officers or other Government officials.

FBI: In addition to the foregoing objections, FBI objects as follows: In addition to the TSC records described above, travel-related information pertaining to individuals may be contained in investigatory files or communication or memoranda related to other FBI activity, but a search for such information would be burdensome, irrelevant and disproportionate to the needs of the case, and the Court has already properly excluded it from this case in the order dated October 27, 2017. Moreover, the existence or nonexistence of such documents would also tend to confirm or deny

whether an individual was a subject of FBI investigation, which is information properly subject to the law enforcement privilege and potentially the state secrets privilege. If such responsive documents existed, such documents would likely contain information protected by privilege or statute, including but not limited to SSI, law enforcement privilege, the state secrets privilege, deliberative process privilege, and the attorney client privilege. Defendants further object to the production of private or personally identifiable information related to the identities of law enforcement officers or other Government officials.

NCTC: In addition to the foregoing objections, NCTC further objects as follows: NCTC objects to the search for or production of any responsive information, if it exists. NCTC is responsible for integrating the national counterterrorism (CT) effort by fusing foreign and domestic CT information, providing terrorism analysis, sharing information with partners across the CT enterprise, and driving whole-of-government action to secure our national CT objectives. As part of its intelligence collection and analysis responsibilities, NCTC may possess some travel information related to particular individuals who are relevant to the agency's CT mission, but it does not systematically collect or maintain such information, and is therefore not a proper source for this information in discovery. Nor is NCTC the originator of such information. The only unique information Plaintiffs could glean from the fact that NCTC possesses such information (as opposed to their own possession, or that of a screening agency) is more specifically whether the individual is of some intelligence interest to NCTC. Such information is not relevant and is likely privileged. NCTC's possession of this information, if any, also falls within the category of irrelevant information that was excluded by the magistrate in the order dated October 27, 2017.

Furthermore, the fact that such information exists or does not exist in NCTC's databases or repositories would likely be information subject to the law enforcement and investigatory files privilege, Sensitive Security Information (including Sensitive Security Information that is not appropriate for disclosure under Section 525(d) of the Department of Homeland Security Appropriations Act of 2007, Public Law No. 109-295, 120 Stat. 1355, as reenacted), national security information, or information otherwise protected by the deliberative process privilege or statute.

Finally, even if NCTC's possession of such information were not privileged or protected, the documents in which such information was contained would likely contain or reveal privileged or protected information. If such responsive documents existed, such documents would likely contain information protected by privilege or statute, including but not limited to SSI, law enforcement privilege, the state secrets privilege, deliberative process privilege, the attorney client privilege, and the Privacy Act.

Response: Subject to and without waiving the foregoing objections, Defendants have conducted a reasonable search for responsive TECS records and PNR and have identified hundreds of potentially responsive law enforcement records. Defendants are in the process of producing redacted versions of those records, consistent with the above objections. Attached hereto are documents stamped Elhady-CBP-000001-Elhady-CBP-000471. The remaining responsive records are still being processed for production. Defendants anticipate completion of processing on or before February 12, 2018. Otherwise, Defendants stand on their objections, particularly in light of the burdensome and duplicative nature of the requests.

Dated: January 4, 2018

Respectfully submitted,

DANA J. BOENTE
United States Attorney

CHAD READLER
Acting Asst. Attorney General, Civil Division

ANTHONY J. COPPOLINO
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was sent via electronic mail to

Counsel of Record in this case.

/s/ Amy E. Powell

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January 4, 2018

Exhibit I

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

ANAS ELHADY, *et al.*,

Plaintiffs,

v.

CHARLES H. KABLE, Director of the
Terrorist Screening Center; in his official
capacity, *et al.*;

Defendants.

Case No. 16-cv-00375

Hon. Anthony J. Trenga

**DEFENDANTS' OBJECTIONS TO PLAINTIFFS' FIRST
SET OF INTERROGATORIES TO TSC**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants Charles H. Kable, Director of the Terrorist Screening Center ("TSC"); Kelli Ann Burriesci, Principal Deputy Director of TSC; Timothy P. Groh, Deputy Director for Operations at TSC; Deborah Moore, Director of Department of Homeland Security Traveler Redress Inquiry Program ("DHS TRIP"); Nicholas J. Rasmussen, Director of the National Counterterrorism Center ("NCTC"); David Pekoske, Administrator of the Transportation Security Administration ("TSA"); Christopher Wray, Director of the Federal Bureau of Investigation ("FBI"); and Kevin K. McAleenan, Acting Commissioner of U.S. Customs and Border Protection ("CBP"); hereby submit objections to the discovery requests titled, "Plaintiffs' First Set of Interrogatories to Defendant Piehota," served January 22, 2018. Defendant Charles Kable, the current Director of TSC, pursuant to Federal Rule of Civil Procedure 25(d), has been substituted for Christopher Piehota. Defendants will refer to these hereafter as the First Set of Interrogatories to TSC.

Hungary (<https://www.state.gov/documents/organization/278373.pdf>)

As to all other information responsive to this Interrogatory, TSC stands on its objections.

Int. 3. Identify the names of the federal government entities that have had access of any kind to TSDB information.

Objections: Defendants object to the request as vague, burdensome, irrelevant and disproportionate to the needs of the case. “Federal government entities” is not defined and could include, for example, only those agencies with which TSC works directly, or could include individuals or companies working for the federal government, such as IT contractors who service software used at TSC and might have incidental access to data. Moreover, the phrase “access of any kind” is undefined, vague and overbroad. It could include, for example, only external exports of TSDB data, or it could include instances of illicit access, screening conducted by and at TSC, further use of TSDB data by an end user of which TSC may not be institutionally aware, or other possibilities. “TSDB information” could mean information within the TSDB or information about the TSDB.

Defendants object to the request as overbroad and seeking information not relevant to any claim or defense in this case and disproportionate to the needs of the case. Incidental or indirect access to TSDB data in ways that have not impacted the Plaintiffs is not relevant to their claims. Moreover, the request goes beyond the uses of data that Plaintiffs allege have impacted them. Additionally, searching for information about entities with which TSC has no direct relationship would be burdensome or impossible, and disproportionate to the needs of the case.

Defendants object to the interrogatory to the extent it seeks information that is subject to the law enforcement and investigatory files privilege, and SSI (including SSI that is not appropriate

for disclosure under Section 525(d) of the Department of Homeland Security Appropriations Act of 2007, Public Law No. 109-295, 120 Stat. 1355, as reenacted). Such information could include, for example, a full description of all end users of TSDB information, and the details described in the definitions and instructions.

Nothing contained in the responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

Response: Subject to and without waiving the foregoing objections, TSC refers plaintiffs to the privilege logs produced in response to plaintiffs' requests for production of documents and further responds: TSC exports subsets of TSDB information to the following federal government entities: DHS (for use by Customs and Border Protection (CBP), TSA, U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE)), Department of State (DOS), NCIC, FBI, and the Department of Defense. For other agencies and events, TSC runs lists of names against the TSDB and reports the results to the agency requester. As to all other information responsive to this interrogatory, TSC stands on its objections.

Int. 4. Identify all legal limitations on TSC's authority to disseminate TSDB information.

Objections: Defendants object to the request as vague, burdensome, irrelevant and disproportionate to the needs of the case. "Legal limitations" is not defined and could include, for example, only direct statutory restrictions on TSC, or it could also include regulations, common practices and norms, whether they bind TSC or other agencies, and even hypothetical legal

claims related to the No Fly List. Defendants also object to the unlimited time frame, which goes beyond what is useful in evaluating Plaintiffs' claim for prospective relief.

Defendants object to the interrogatory because it seeks information that is subject to the law enforcement and investigatory files privilege, and SSI (including SSI that is not appropriate for disclosure under Section 525(d) of the Department of Homeland Security Appropriations Act of 2007, Public Law No. 109-295, 120 Stat. 1355, as reenacted). This interrogatory seeks specific information about what might reasonably be assumed to be a rare occurrence – a small child who meets the reasonable suspicion standard for inclusion in the TSDB as a No Fly, Selectee, or known or suspected terrorist. Any response would provide operationally valuable information to persons planning terrorist attacks.

Nothing contained in the responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

Response: Subject to and without waiving the foregoing objections, TSC notes that to be listed as a No Fly, Selectee, or KST, a child would have to meet all applicable standards and criteria. Otherwise, TSC stands on its objections.

Int. 23. Identify all the different ways a person's watchlist status is considered in any way by any federal agency.

Objections: Defendants object to the request as vague, burdensome, irrelevant and disproportionate to the needs of the case. The terms "considered" and "ways" are vague and undefined. The interrogatory could include only final agency actions, any type of use for

investigatory or analytical purposes, including specific statistical analyses conducted, characterizations of the thoughts of individual employees, or any number of other possibilities.

Defendants object to the request as overbroad and seeking information not relevant to any claim or defense in this case and disproportionate to the needs of the case. Incidental or indirect “consideration” of TSDB information in ways that have not impacted the Plaintiffs is not relevant to their claims. Moreover, the request goes beyond the uses of data that Plaintiffs allege have impacted them. The request is further misdirected; TSC cannot speak authoritatively on behalf of other agencies. Additionally, searching for information about entities with which TSC has no direct relationship would be unduly burdensome or impossible, and disproportionate to the needs of the case.

Defendants object to the interrogatory because it seeks information that is subject to the state secrets privilege, the law enforcement and investigatory files privilege, and SSI (including SSI that is not appropriate for disclosure under Section 525(d) of the Department of Homeland Security Appropriations Act of 2007, Public Law No. 109-295, 120 Stat. 1355, as reenacted). Such information could include, for example, a full description of all end users of TSDB information, and all classified and privileged analyses conducted that even reference the TSDB status of an individual, such as the details described in the definitions and instructions.

Nothing contained in the responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

Response: Subject to and without waiving the foregoing objections, see Response to Interrogatory 3. Otherwise, TSC stands on its objections.

cannot be considered to represent the actual basis for the decision. A search for any such information would be unduly burdensome. For these reasons, TSC is not able to provide an answer to this interrogatory.

For the Responses:



TIMOTHY P. GROH
Deputy Director for Operations
Terrorist Screening Center

For the Objections:

Respectfully submitted,

Dated: February 21, 2018

CHAD READLER
Acting Asst. Attorney General, Civil Division

ANTHONY J. COPPOLINO
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Exhibit J

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

ANAS ELHADY, *et al.*,

Plaintiffs,

V.

CHARLES H. KABLE, Director of the Terrorist Screening Center; in his official capacity, *et al.*;

Defendants.

Case No. 16-cv-00375
Hon. Anthony J. Trenga

**DEFENDANTS' OBJECTIONS TO PLAINTIFFS' SECOND
SET OF INTERROGATORIES TO TSC**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants Charles H. Kable, Director of the Terrorist Screening Center (“TSC”); Kelli Ann Burriesci, Principal Deputy Director of TSC; Timothy P. Groh, Deputy Director for Operations at TSC; Deborah Moore, Director of Department of Homeland Security Traveler Redress Inquiry Program (“DHS TRIP”); Russell Travers, Director of the National Counterterrorism Center (“NCTC”); David Pekoske, Administrator of the Transportation Security Administration (“TSA”); Christopher Wray, Director of the Federal Bureau of Investigation (“FBI”); and Kevin K. McAleenan, Acting Commissioner of U.S. Customs and Border Protection (“CBP”); hereby submit objections and responses to the discovery requests titled, “Plaintiffs’ Second Set of Interrogatories to Defendant Piehota,” served January 24, 2018. Defendant Charles Kable, the current Director of TSC, pursuant to Federal Rule of Civil Procedure 25(d), has been substituted for Christopher Piehota. Defendants will refer to these hereafter as the Second Set of Interrogatories to TSC.

OBJECTIONS

Int. 1. Identify all uses of TSDB information by any entity

Objections: Defendants object to the request as vague, burdensome, irrelevant and disproportionate to the discovery needed for the sole remaining claim in the case concerning procedural due process. “Uses” is not defined and could include only final agency actions or could include investigative activity, ordinary security screening, purely analytical uses, or any number of other possibilities. Moreover, the phrase “any entity” could mean the names of federal agencies, or it could include suboffices within TSC, entities with whom TSC has no direct relationship or any number of other possibilities. “TSDB information” could mean information within the TSDB or information about the TSDB. The broader readings are both burdensome and irrelevant, as they do not even arguably evidence any deprivation of a liberty interest. Defendants further object to the interrogatory as duplicative.


Defendants object to the request as overbroad and seeking information not relevant to the sole remaining claim in this case or defense thereto and is disproportionate to the needs of the case. Incidental or indirect access to TSDB data in ways that never have and never arguably could impact the Plaintiffs is not remotely relevant to their claims. Investigative and analytical uses of TSDB data are not relevant to Plaintiffs’ claims. Moreover, the request goes beyond the uses of data that Plaintiffs allege have impacted them. Additionally, searching for information about actions taken by other agencies or entities, including entities with which TSC has no direct relationship, would be unduly burdensome and disproportionate to any discovery needed in the case. Additionally, the interrogatory is misdirected, because TSC is not responsible for actions taken by other agencies and cannot speak on their behalf.

Defendants also object to the interrogatory to the extent it seeks information that is subject to the state secrets privilege, law enforcement and investigatory files privilege, and SSI (including SSI that is not appropriate for disclosure under Section 525(d) of the Department of Homeland Security Appropriations Act of 2007, Public Law No. 109-295, 120 Stat. 1355, as reenacted). A comprehensive answer could theoretically require, for example, a full description of all end users of TSDB information, and the specific uses to which it is put and under what circumstances, including investigatory uses, and ways in which the data is analyzed alongside other intelligence. Generally, the identities of foreign partners who receive information from TSC are protected by the law enforcement privilege, and in some instances the state secrets privilege, except as otherwise officially acknowledged.

Nothing contained in the responses shall be construed as a waiver of any applicable objection or privilege as to any Request or as a waiver of any objection or privilege generally. Inadvertent disclosure of information subject to a claim of privilege shall not be deemed a waiver of such privilege.

Response: Subject to and without waiving the foregoing objections, TSC responds that agencies and officials authorized or required to conduct terrorist screening or to use information for diplomatic, military, intelligence, law enforcement, immigration, transportation security, visa, and protective processes are given access to terrorism information to facilitate their respective public missions. TSC further refers Plaintiffs to its responses to Interrogatories No. 2, 3, 6 (responses served February 21, 2018). Otherwise, TSC stands on its objections.

For the Responses:


TIMOTHY P. GROH
Deputy Director for Operations
Terrorist Screening Center

For the Objections:

Respectfully submitted,

Dated: February 23, 2018

CHAD A. READLER
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2018, I electronically filed the foregoing by using the Court's ECF system. I further certify that all participants in the case are registered ECF users and will be electronically served by the Court's ECF notification system.

Respectfully submitted,

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS

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